DOCUMENT RESUME

ED 134 641 UD 016 689

TITLE Emergency School Aid Hearings Before a Subcommittee of the Committee on Appropriations, United States Senate, Ninety-Fourth Congress. Second Session. Special Hearing.

INSTITUTION Congress of the U.S., Washington, D.C. Senate Committee on Appropriations.

PUB DATE 76

NOTE 67p.

EDRS PRICE MF-$0.83 HC-$3.50 Plus Postage.

DESCRIPTORS *Educational Needs; Educational Problems; *Federal Aid; Federal Court Litigation; Federal Government; *Federal Legislation; Financial Support; Integration Effects; Integration Litigation; Integration Methods; Integration Plans; Public Schools; School Districts; *School Integration; *School Support

IDENTIFIERS Kentucky (Louisville); Massachusetts (Boston)

ABSTRACT

The purpose of these hearings was to hear testimony on an amendment to the Emergency School Aid Act proposed by Senator Jackson. This amendment would provide 50 million dollars in discretionary funds to the Commissioner of Education. These funds could be used in areas having special problems with school integration. Testimony was given on the needs and problems of two desegregating school systems: the Louisville-Jefferson combined school system in Kentucky, and the Boston, Mass. public schools. The needs and problems of the Cleveland, Ohio public schools were also discussed in testimony. The following congressional witnesses gave testimony: the Hon. E. Brooke, U.S. Senator from Massachusetts; the Hon. H. Jackson, U.S. Senator from Washington; and the Hon. E. Kennedy, U.S. Senator from Massachusetts. The Hon. K. White, Mayor, Boston, Mass. also testified. Letters, telegrams and prepared statements were received from government officials and private citizens affiliated with such organizations as: New Detroit, Inc.; the Detroit public schools; the Omaha, Nebraska, public schools; the Equal Educational Opportunity Program, Department of Health, Education, and Welfare; Jefferson County and Louisville, Kentucky; the Cleveland, Ohio, public schools; the Boston School Committee and the Boston City Council. (Author/AM)

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EMERGENCY SCHOOL AID

HEARINGS

BEFORE A

SUBCOMMITTEE OF THE
COMMITTEE ON APPROPRIATIONS
UNITED STATES SENATE

NINETY-FOURTH CONGRESS

SECOND SESSION

Printed for the use of the Committee on Appropriations

SPECIAL HEARING

U.S. DEPARTMENT OF HEALTH, EDUCATION & WELFARE
NATIONAL INSTITUTE OF EDUCATION

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69-276 O WASHINGTON : 1976

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EMERGENCY SCHOOL AID

WEDNESDAY, FEBRUARY 25, 1976

U.S. SENATE,
SUBCOMMITTEE ON DEPARTMENTS OF LABOR AND
HEALTH, EDUCATION, AND WELFARE
AND RELATED AGENCIES,
Washington, D.C.

The subcommittee met at 2 p.m., in room 1114, Everett McKinley Dirksen Office Building, Hon. Warren G. Magnuson (chairman) presiding.

Present: Senators Magnuson and Brooke.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

AMENDMENT TO EMERGENCY SCHOOL AID ACT

CONGRESSIONAL WITNESSES

Senator MAGNUSON. The subcommittee will come to order.

We will now hear testimony on an amendment submitted to this subcommittee for the upcoming second supplemental appropriation bill.

Senator Jackson has proposed an amendment for an additional $50 million for emergency school aid. The current funding level for this account is $241 million, and the President's budget for next year, fiscal year 1977, is $249 million.

Senator Jackson and our colleague, Senator Kennedy, are here to discuss the proposed amendment. The amendment would provide additional discretionary funds which could be targeted on areas having special problems with desegregation, such as Boston and Louisville.

This subcommittee is now holding hearings with HEW on the 1977 budget. The budget request proposes to shift funds, $10 million, away from State grants into the Commission's discretionary fund.

Senator Brooke, who is ranking Republican on our subcommittee, would like to say a few words at this point.

PRIORITIES FOR EMERGENCY SCHOOL AID PROGRAM

Senator BROOKE. Thank you, Mr. Chairman.

We can rejoice in the fact that we have saved the emergency school aid program from radical change or oblivion, but it is not yet the fully effective tool we need in dealing with problems incident to school desegregation.

Our first priority at this time last year was to prevent the dismantling of the program which assures each State a proportionate share of the available funds then running at about $230 million a year.

In the place of this the administration offered a $75 million program which put all of the funds at the disposal of the Commissioner of Education to be used as he saw fit.

Fortunately, Congress did not go along with this. The members recognized the importance of providing each State with a base of support. And I believe they also recognized that school desegregation is not something that can be resolved over 1 or 2 years but requires continuous attention and long-term funding.

Thus, there really was little, if any, support for revamping and reducing the ESA program. Rather, Congress and particularly the Senate wanted to go in the other direction—strengthening and expanding the effort.

In this regard I was glad to lead the successful Senate effort to provide a more adequate funding level than the budget requested and even the House was willing to allow. I am glad the Senate position prevailed and that funding for both fiscal years 1975 and 1976 is at the $215 million level for the ESA program.

And I am pleased to report that for fiscal year 1977 the administration not only has abandoned its plans for a truncated ESA program, it has requested the higher level of funding Congress provided in the last 2 fiscal years.

Obviously, we in Congress have made progress, but problems remain.

One of these centers on the ability of the ESA program to play an expanding role. This arises as the courts issue additional orders for the desegregation of public school systems and more communities look to ESA for financial assistance during the transition to unitary schools.

Under present law each State receives its ESA allocation on the basis of a formula directly related to its number of minority children between the ages of 5 and 17. This means that while more than one city in a State may qualify for ESA, the basic level of funding stays pretty much the same because of the population factor.

Congress, of course, may increase funding for the program, but any additional amounts must be spread among 50 States. It is possible to secure additional funds through redistribution of money not used by other States or through the Commissioner's 5 percent discretionary fund—called special programs and projects. However, this provides only about $10 million and at present its resources are in great demand.

BOSTON, MASS., EXAMPLE

Boston provides a prime example of the problem we are dealing with. While Massachusetts is entitled to slightly more than $1 million under ESA, Boston has asked the Federal Government for at least $8 million and recently the figure of $15 million has appeared in the press.

Even if Boston were to get the entire State allocation—and this is by no means certain—it still would be short of its stated need by some $77 million.

I am sure this situation is repeated in other States where some cities get help, but other, possibly equally needy communities are left to fend for themselves.

With public school desegregation ordered or about to be ordered in a number of cities, it is essential that sufficient funds be available to assist in this always difficult, sometimes explosive, process.

EXPANSION OF COMMISSIONER'S DISCRETIONARY FUND

I have come to the conclusion that we not only must make more money available for ESA, but we must be in a position to target it on cities with the greatest need in this problem area. I believe we can do this by expanding the Commissioner's discretionary fund so as to provide the necessary flexibility for dealing with such special situations as Boston and the Louisville-Jefferson County combined school system in Kentucky.

Thus I am glad today's witnesses appear to be in support of this approach and will help our subcommittee make the necessary record for taking action on ESA both in the second supplemental appropriations bill and again in the regular fiscal year 1977 Labor-HEW bill.

I also am pleased that the administration is asking authority to expand the Commissioner's discretionary fund to from 5 to 10 percent. This puts us in a strong position to ask Congress to agree to take such a step.

INCREASE IN DISCRETIONARY FUNDS

The precise amount of additional money that is necessary is not yet clear. While the Senator from Washington State, Mr. Jackson, advocates an extra $50 million for ESA, he may be asking for more than the forthcoming Labor-HEW budget ceiling will allow for fiscal 1977. On the other hand, we may be able to get by with an additional $30 million if we increase the Commissioner's discretionary fund an extra 5 percent above the administration request—to 10 percent. This would provide some $36.7 million for discretionary use. From the information available to me, this appears to be sufficient to meet the justifiable needs of school districts with the greatest problems in this area.

I also am considering a provision making some or all of the discretionary funds available only as needed. Any additional amount not required for special situations would be redistributed to all of the States under the ESA formula.

I believe such changes would help to make the ESA program more effective and more useful in the future. As I have in the past, I will be glad again to play a leadership role in this matter on our Labor-HEW Subcommittee. I hope I can count on the continued support of today's witnesses as we deal with ESA in the months ahead.

Special Emergency Appropriation

STATEMENT OF HON. HENRY M. JACKSON, U.S. SENATOR FROM WASHINGTON

Senator Magnuson. Our first witness on this request, which has been proposed by myself, Senator Jackson, who is on the proposed amend-

ment for an additional $50 million for American school aid. We are glad to hear from Senator Jackson.

Senator JACKSON. I want to especially thank you, as chairman of the committee, for the expeditious way in which you have arranged for this hearing this afternoon. I think it does show, Mr. Chairman, that Congress can move swiftly when crises threatens.

FISCAL CHAOS IN U.S. CITIES

That fiscal chaos faces Boston because of court-ordered busing is beyond, I think, beyond question.

To comply with the orders of the courts, Boston is faced with a $30 million deficit this year alone. Louisville, Cleveland, and Detroit face similar financial disarray, although their situations are not yet as acute as that of Boston.

It is a simple fact that these cities are faced with vastly increased property taxes—or curtailment of essential educational services—unless they receive financial aid from the Federal Government. Clearly, we must not add to the educational problems faced by the children of these cities. The children have suffered enough.

AID PROGRAM FROM FEDERAL GOVERNMENT

It is proper that the Federal Government should help pay the bill. The Emergency School Aid Act of 1972 was enacted, Mr. Chairman, in part for just this particular purpose. The problem is that the Ford administration has failed to request nearly enough money from Congress to meet the special needs of these cities.

It is for this reason that I am proposing today that a special emergency appropriation of $50 million be included in the second supplemental appropriations bill now before your subcommittee. I propose that this appropriation be earmarked for discretionary expenditure by the Commissioner of Education for School districts such as Boston's which are involved in a financial crisis resulting from court-ordered desegregation plans.

I urge this subcommittee to give this matter its most serious consideration.

One final word. Whether one is for busing or opposed to busing is not the question before us today. Many of the witnesses you will be hearing from have been and are in basic agreement over the issue of court-ordered busing to achieve desegregation. But they are united in supporting this proposal.

It is most encouraging, I think, for the future of their cities, that we have been able to bring them together in this common cause. By working on this program together, they have demonstrated their good faith. It is now up to us in the Congress to demonstrate ours.

COMMUNICATIONS

Mr. Chairman, I would also like to include into the record some wires and communications relating to this matter.

Senator MAGNUSON. Without objection, so ordered.

Senator JACKSON. Thank you, Senator.

[The information follows:]

Telegram from Frank J. Kelley

PMS SENATOR HENRY M JACKSON CARE ELLIOTT ABRAMS, DLR
137 RUSSELL SENATE OFFICE BLDG
WASHINGTON DC
RECENTLY THE DETROIT SCHOOL SYSTEM HAS UNDERGONE DESEGREGATION RESULTING IN SUBSTANTIAL ADDITIONAL COSTS TO SUCH SCHOOL SYSTEMS. THUS I WOULD CERTAINLY SUPPORT THE SUPPLEMENTAL APPROPRIATION OF $50,000,000 TO THE EMERGENCY SCHOOL AID ACT FOR DISCRETIONARY ALLOCATION BY THE COMMISSIONER OF EDUCATION. DETROIT AND OTHER LARGE URBAN SCHOOL SYSTEMS UNDERGOING DESEGREGATION WOULD CLEARLY BENEFIT FROM ADDITIONAL FEDERAL FUNDS TO HELP DEFRAY THE ADDITIONAL COSTS INCURRED IN THE DESEGREGATION PROCESS. WOULD YOU PLEASE COMMUNICATE MY VIEWS ON THIS SUBJECT TO CHAIRMAN MAGNUSON OF THE SENATE APPROPRIATION SUBCOMMITTEE ON LABOR AND HEALTH EDUCATION AND WELFARE
ATTORNEY GENERAL FRANK J KELLEY

Telegram from Lawrence P. Doss

DEAR SENATOR JACKSON THE DETROIT PUBLIC SCHOOLS RECENTLY BEGAN IMPLEMENTING A FEDERAL DISTRICT COURT ORDER CALLING FOR SCHOOL DESEGREGATION. THE COST OF THE TRANSPORTATION AND QUALITY EDUCATION REQUIREMENTS OF THE ORDER ARE ESTIMATED TO BE APPROXIMATELY 38 MILLION DOLLARS FOR THE REMAINDER OF THIS YEAR AND THE 1976-77 SCHOOL YEAR. THE DETROIT PUBLIC SCHOOL SYSTEM DOES NOT HAVE SUFFICIENT FUNDS TO MEET THE COST OF DESEGREGATION UNDER THE COURTS ORDER. IN THE EVENT ADDITIONAL MONIES ARE ADDED TO THE DISCRETIONARY FUND OF THE ASSISTANT SECRETARY OF EDUCATION-HEW-TO BE USED IN CONJUNCTION WITH THE EMERGENCY SCHOOL ASSISTANCE ACT, THE DETROIT PUBLIC SCHOOL SYSTEM WOULD BE A PRIME CANDIDATE FOR SUCH FUNDS.
LAWRENCE P DOSS PRESIDENT NEW DETROIT INC

Telegram from Arthur Jefferson

PMS SENATOR HENRY JACKSON
STATE HOUSE
WASHINGTON DC
THE DETROIT PUBLIC SCHOOLS STRONGLY SUPPORT THE PROPOSAL OF SENATOR JACKSON TO INCREASE BY FIFTY MILLION DOLLARS THE SUPPLEMENTAL APPROPRIATIONS UNDER THE EMERGENCY SCHOOL AID ACT. IT IS OUR UNDERSTANDING THAT THE FIFTY MILLION DOLLARS WOULD BE ADDED TO THE COMMISSIONERS DISCRETIONARY FUND FOR THE PURPOSE OF ASSISTING THOSE SCHOOL DISTRICTS THAT HAVE RECENTLY UNDERTAKEN COSTLY DESEGREGATION PROGRAMS. AS YOU ARE AWARE, THE DETROIT PUBLIC SCHOOL SYSTEM HAS RECENTLY IMPLEMENTED A FEDERAL COURT ORDER DESEGREGATING ITS SCHOOLS. THIS ORDER NOT ONLY CONTAINS PROVISIONS FOR THE REASSIGNMENTS OF THE STUDENTS BUT ALSO REQUIRES THE IMPLEMENTATION OF EDUCATIONAL COMPONENTS THAT WILL IMPROVE THE QUALITY OF EDUCATIONAL SERVICES PROVIDED TO STUDENTS. OBVIOUSLY THE COST OF

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IMPLEMENTING THIS ORDER IS SIGNIFICANT AND WILL REQUIRE THE ACQUISITION OF ADDITIONAL FINANCIAL RESOURCES. FOR THESE REASONS THE SCHOOL DISTRICT ENDORSES SENATOR JACKSON'S PROPOSAL AND WISHES TO CONVEY THIS SUPPORT TO SENATOR JACKSON AS WELL AS SENATOR MAGNUSSON, CHAIRMAN OF THE SENATE APPROPRIATIONS SUBCOMMITTEE.

ARTHUR JEFFERSON GENERAL SUPERINTENDANT DETROIT PUBLIC SCHOOLS

TELEGRAM FROM OWEN A. KNUTZEN

FMS SENATOR HENRY JACKSON
ROOM 137 RUSSELL SENATE OFFICE BLDG
WASHINGTON DC 20510
THE OMAHA SCHOOL DISTRICT IS UNDER ORDER OF THE FEDERAL COURT TO IMPLEMENT A SYSTEM WIDE SCHOOL DESEGREGATION PLAN BY THE COMMENCEMENT OF THE COMING SCHOOL YEAR. THIS ORDER REQUIRES THE EXPENDITURE OF SUBSTANTIAL FUNDS FOR THE PURCHASE AND OPERATION OF THE STUDENT TRANSPORTATION, AND ADDITIONAL FUNDS FOR NONTRANSPORTATION EXPENSES REQUIRED TO PROPERLY IMPLEMENT THE DESEGREGATION PLAN. ALTHOUGH THESE EXPENDITURES ARE ORDERED BY FEDERAL COURT BASED UPON INTERPRETATION OF FEDERAL LAW AND LITIGATION INSTITUTED BY THE UNITED STATES DEPARTMENT OF JUSTICE, CURRENT LAW PROHIBITS THE UTILIZATION OF ANY FEDERAL FUNDS TO DEFRAY TRANSPORTATION COSTS. MOREOVER, THE CURRENT ALLOCATION FORMULAS OF THE EMERGENCY SCHOOL AID ACT SEVERELY LIMIT THE PROPORTION OF NONTRANSPORTATION COSTS WHICH WILL BE REIMBURSED.

WE THEREFORE SUPPORT YOUR PROPOSAL TO INCREASE BY $50,000,000 THE DISCRETIONARY FUNDS AVAILABLE TO THE COMMISSIONER. THE COMMISSIONER SHOULD HAVE AVAILABLE SUCH ADDITIONAL FUNDS, NOT SUBJECT TO THE ALLOCATION FORMULAS IN ORDER THAT GREATER ASSISTANCE CAN BE GIVEN TO SCHOOL DISTRICTS, SUCH AS OMAHA, WHICH HAVE BEEN REQUIRED TO ASSUME THE HEAVY FINANCIAL BURDEN OF IMPLEMENTATION OF A SCHOOL DESEGREGATION PLAN.

OWEN A KNUTZEN, SUPERINTENDENT OMAHA PUBLIC SCHOOLS

PRECEDENCE FOR EMERGENCY SCHOOL AID

Senator MAGNUSON. Do you feel that there is ample precedence for this sort of appropriation?

Senator JACKSON. Yes. The law prohibits, of course, assistance to the school district to pay for the cost of busing. But, the authorization of 1972 does provide, in connection with the designated funds, authority to deal with many related expenses, as will be explained here by representatives of the cities involved. They pertain to such matters as the cost of extra employees, overtime; that sort of thing. I do think that the law is clear on that point. And I believe that in those matters that certainly are above and beyond the control of the local people who have had to face the costs, they, the local taxpayers should get some relief.

The specifics will be offered first by Mayor White and by Mr. McDonough, the chairman of the school committee in Boston, and then there will be testimony from the others.

Senator MAGNUSON. Our Subcommittee is currently holding hearings on the fiscal year 1977 budget.

As I understand it though, you suggest that this money be made available immediately and, therefore, should be put in a supplemental bill.

Senator JACKSON. The Senator is correct. Those are items that have been incurred since, I believe, last summer. It may vary with school districts. As explained to me by the mayor and by the chairman of the school committee. In the case of Boston this goes back as I recall to last July. I may be in error about the exact date.

Senator MAGNUSON. Thank you, Senator Jackson.

Senator JACKSON. Mr. Chairman, I want to thank the distinguished Senator from Massachusetts for this statement. And I want to thank the Chairman once again for his cooperation.

Senator MAGNUSON. We will now hear from the other Senator from Massachusetts, Senator Kennedy.

ADDITIONAL FUNDS FOR TITLE I, ESEA

STATEMENT OF HON. EDWARD M. KENNEDY, U.S. SENATOR FROM MASSACHUSETTS

INCREASE OF $1 BILLION PROPOSED

Senator KENNEDY. Thank you very much, Mr. Chairman, and my colleague, Senator Brooke.

I have a statement that I would like filed with the committee, if I could, and I am mindful of the time limitation that you and the members of the committee are under today.

The purpose of my presence here, Mr. Chairman, is to indicate my strong support for the amendment to add some $50 million to the Emergency School Aid Act, which has been put forward by Senator Jackson. And also to urge the committee to accept my proposal to add $1 billion additional to title I of the Elementary and Secondary Education Act with which you are very familiar. That legislation passed in 1965 and currently is benefiting approximately 15,000 young people in my own city of Boston, yet under the definition of my request

to add $1 billion to this act, some 46,000 young people could benefit from that program.

Mr. Chairman, the reason for the particular appropriation introduced by Senator Jackson is a result of the pressure which the school board is under in the city of Boston today. I think if you review exactly what that order suggests word by word, it is clear that the Emergency School Aid Act is the appropriate law to deal with the unreal problems in Boston. The Emergency School Act was a result of that special committee on Equal Educational Opportunity that was established under Senator Mondale, which was broadly representative of education and appropriations and other interests, and it has really been in compliance with the central thrust of the demand to extend equal opportunities to all students, that the city of Boston is substantially in desperate need of aid at this time.

AREAS TO ABSORB INCREASED FUNDS

We are talking about money to pay transitional aides and summer overtime for teachers and overtime pay for professional personnel and for hiring new teachers. In addition as a result of the court order, alterations and repairs need to be made in many of the school buildings. These are all educational burdens, educational burdens which are a direct result of that court order.

Obviously, the Emergency School Aid Act was meant to reach those particular kind of needs when that law was passed by an overwhelming vote in the Senate, as well as in the House of Representatives. We are completely justified in requesting appropriations to fulfill that particular mandate, and we make that request not only for the city of Boston, but for the other cities as well, Mr. Chairman, other cities in the North as well as in the South are being hard-pressed now to comply with the requirements for complying with these court decrees.

So, Mr. Chairman, I am hopeful that we can get the moneys that have been requested here today under the $50 million request. We hope that would result in approximately $15 million or more to be used for the educational purposes in Boston.

IMPROVING QUALITY EDUCATION

I do not need to go into the particular situation that we are facing in Boston today. But, I would say that both black and white families are interested in improving quality education and that is just what we believe could result from the passage of the $50 million appropriation. And also with the increase in the title I program we feel the need completely justifies this request.

We do not need a great deal more study or consideration or comment or debate about that particular measure. All we need is the commitment in this country that says education of children is important. It is important in Boston, and it is important in every city of this country, and that is an obligation and a responsibility that we must face.

PREPARED STATEMENT

I do not want to go into considerable detail and argument in support of this measure. I have a prepared statement that I would like

to submit for the record of this hearing. And I will be delighted to respond to your questions. I will yield to our distinguished mayor, Mr. White, and John McDonough, and Mrs. Hicks, who are here today.

Senator MAGNUSON. We will put into the record your statement in full.

[The information follows:]

Mr. Chairman: I am pleased to appear before your Appropriations Subcommittee on Labor-HEW in its consideration of supplemental appropriations for education programs in the current fiscal year.

Along with Senator Jackson and many of the witnesses you will hear, I have come to urge the Subcommittee to approve an additional $50 million in appropriations for the Emergency School Aid Act to be directed through the Commissioner's discretion to Boston and other major urban areas now faced with complying with federal court orders for desegregation.

A second supplemental request which I am making in the area of education is already familiar to the Subcommittee and its members. I am urging an increase in compensatory education programs under Title I of the Elementary and Secondary Education Act (ESEA) of $1 billion.

With regard to the Emergency School Aid request, let me describe, if I might, the current situation in Boston.

We are under a federal court order requiring the desegregation of the school system. We are not here to argue the merits of that order. It is the law and I believe the vast majority of the citizens of Boston are now concerned with seeing that, in complying with that order, the children of our city receive a quality education.

We are facing a difficult time, one in which some citizens are complying reluctantly and where a minority at time has engaged in useless and destructive violence.

But for the city as a whole, there is an attempt to live with the order and to move beyond it to achieve better education for all children.

The cost of that effort, an effort directly related to the implementation of the federal district court order, has reached $27.3 million in this school year, 18 percent of the total school budget. A year ago, the school department had a $13 million deficit. This year, it may reach close to $20 million.

We are seeking now, as I have ever since the court order was issued in June 1974, to harness the resources of the federal government to defray some of the costs of compliance with the court mandate to desegregate. We do so in keeping with the federal policy expressed in the Emergency School Aid Act of 1972.

I recall at hearings of the Select Committee on Equal Educational Opportunities when we cried for three years to achieve the enactment of the Emergency School Aid Act. When we finally obtained its passage, we still were unable to convince the Administration and a majority of the Congress to fully fund this program.

The Emergency School Aid Act was enacted then with an authorization of $1 billion. We have never come close to providing matching appropriations. The Congress has even had to fight to prevent the Administration from closing down the program entirely.

The lack of federal leadership, I am convinced, has made more difficult the process of complying with federal court orders all across this land. In so doing, it has hindered significantly

the process of improving educational opportunities for school children -- both white and black -- in this nation.

I was a sponsor of the Emergency School Aid Act. We were aiming then to use that legislation to help communities in the South find the resources and the programs to ease the process of desegregation.

Now the court orders have moved to the cities and to the North -- to Louisville, to Cleveland, to Detroit and to Boston -- and the same federal policy exists; but the costs are higher. I believe that it is right that the witnesses from Boston and the other cities are here today to urge that the policy be applied to their cities and that the necessary funds be appropriated to do the job.

I urge the Committee to approve the supplemental request of $50 million.

My second request relates to an even longer standing federal commitment, a commitment that began with the Elementary and Secondary Education Act of 1965, a commitment to provide compensatory education to the nation's disadvantaged children.

In fiscal year 1976, we have virtually a standstill Title I program compared to last year. The current budget proposes an actual decrease for next year. In fact, since FY 1973 we have seen a 30 percent hike in the cost of living but only a slight increase in the Title I program from $1.75 billion to $2.05 billion. And I might note, defense spending has gone up from $80 billion to $98 billion in the same time period.

With the increase I propose, two million more disadvantaged children would be able to participate in Title I programs. In Massachusetts, there would be an increase of 42,500 children beyond the current 71,000 Title I students.

Let me emphasize that this would still just permit us to reach one half of the eligible children.

In Boston alone, there are today 46,000 low income students but only 15,210 receiving Title I services.

I know Boston schools. They are overcrowded. The average pupil/teacher ratio is 25 to 1 on the elementary schools. In the high schools, it jumps to 30 to 1. We have equipment in need of repair and school buildings that need rebuilding or renovation at the least. They need more modern learning materials and textbooks and more specialists in the basic areas of reading and mathematics.

Title I could help achieve those changes in Boston and throughout the nation.

I believe that the Subcommittee recognizes, as I do, that our security as a nation does not rest on the weapons in our stockpiles alone. For the long run, it rests far more on whether we can provide new generations of young people who are educated to meet the challenges that we have not yet even begun to foresee.

I would urge the Committee to adopt this amendment to increase Title I as well as to increase emergency school aid funds.

SUPPORT OF EMERGENCY SCHOOL ACT

Senator MAGNUSON. I might say to the Senator from Massachusetts that I happen to be one of the ranking members of the committee you spoke of and I subscribe to what you say is the purpose of this bill originally; the Emergency School Act.

Senator BROOKE. First of all, Mr. Chairman, I would just like to commend my senior colleague.

Senator KENNEDY. I am glad to see you back. I know you have been out with the flu.

Senator BROOKE. This sort of a hearing is medicine for influenza. It is good seeing you here, and I am certainly happy to see our mayor from the city of Boston and chairman and members of the school committee, and Senator Jackson.

Just one question, and I should have asked it of Senator Jackson. As I understand your response to the chairman's question, you are interested in this $50 million for 1976—for this year, is that correct?

Senator KENNEDY. That is correct. It would have to be for this year with an increased fund for the transitional period, as well.

Senator BROOKE. I believe we will have these problems going over into 1977. It seems to me we are going to need as much or maybe more for 1977 as we will need in 1976.

I see that Senator Jackson is shaking his head. I am just wondering, would you like to improve on this for 1977; would you want to take this over into 1977?

Senator KENNEDY. Well, I would certainly hope that we would, Mr. Chairman. As Senator Brooke knows, we are going to face additional educational problems when school opens next September, and I believe other communities are going to have the identical situation.

The authorization was for $1 billion for that program. Senator Jackson has commented on the difficulty we have had in getting even the minimum kind of appropriation. Now, we have only received less than $3 million for that program in the city of Boston.

Obviously, it would be valuable to have a significant increase going through 1977. I think this particular issue can be best explained here by the mayor in terms of next year's needs. I would certainly support, and let me just point out that the billion dollars in total will not exceed the limits placed by the budget committee on education programs for next fiscal year. But that amount falls within the range of the budget committee recommendations. It would be $1,080 million exactly, so it does fall within the budget committee recommendations.

There has to be some balance between funds for jobs and funds for these education projects. I am very hopeful that we can get it for this year, the transition period, and some for the future as well.

INCREASE IN EDUCATIONAL COSTS

Senator MAGNUSON. For the purposes of the record, the 1977 budget request is $1.9 million for title I, and you suggest adding a billion dollars to that?

Senator KENNEDY. Right. The Senator is correct, as he will note that since 1973 title I has increased just about 10 percent. When educational costs have increased from 30 percent to 34 percent, we are

not keeping pace with the cost of living and the total number of children that have actually been covered by title I has been reduced.

I know that the chairman is well familiar with it. This is an absolutely essential program. We have got tens of thousands of young children that do not benefit at the present time.

Senator MAGNUSON. When you talk about increasing title I, we are talking about increasing the amount allotted for fiscal year 1977?

Senator KENNEDY. Yes.

Senator MAGNUSON. And this amount will become available immediately?

Senator KENNEDY. The Senator is correct.

Senator BROOKE. That billion dollars, is that not the same amendment that you offered on the floor last year but, because of senatorial rules, you were unable to get is passed?

Senator KENNEDY. Parliamentary objection.

Senator MAGNUSON. This is the same amendment?

Senator KENNEDY. Yes, sir.

Senator MAGNUSON. All right.

Senator KENNEDY. Thank you, very much, Mr. Chairman.

NONDEPARTMENTAL WITNESS

STATEMENT OF KEVIN H. WHITE, MAYOR, BOSTON, MASS.

SUPPORT OF JACKSON AMENDMENT

Mr. WHITE. I am conscious of the time restrictions on you, Mr. Chairman.

Senator MAGNUSON. I had better identify you. You are the mayor of Boston.

Mr. WHITE. Yes; that is restrictive on occasion, but I want to thank you, Mr. Chairman. As I say, I am conscious of the time, the constraints of the rollcall, evidently 3 or 4 minutes, and I will try to capsule my presentation, but by and large it is a support.

Senator MAGNUSON. Thank you, please proceed.

Mr. WHITE. I want to thank you for the opportunity to testify, and I want to basically come here to support the amendment offered by Senator Jackson, and I might add, in that request, to support the testimony made by the previous witness, Senator Kennedy, regarding title I.

I join with my colleagues who are here with me today from the city of Boston, Mrs. Hicks, city council, Mr. McDonough, school committee chairman, and other municipal officials, hoping that this committee will support these amendments.

ADDED COSTS OF BUSING ORDER

Before I outline my position quickly, I think it is important to make it clear what we are not talking about, and that is this issue of busing. We are not here to debate the merits of busing.

My city is carrying out a court order, and we have no intentions of endeavoring to reverse that order as it now stands. What I am here to testify today on is simply the desperate need for financial help to implement this court order as long as this is the court order within the city of Boston.

We have endeavored, in the city, over the past few years in particular, with every imaginatory skilled man we possess who practices economics for advice. But, despite all of that, the economic strain contributing to the burden that is put on us financially with busing. We find that a very staggering burden to carry specifically in this fiscal year.

OPERATING BUDGET OF BOSTON SCHOOLS

We are operating in a deficit of $33 million. Now, $24 million of that is directly attributed to this question of busing. In the last fiscal year we observed $80 million in our budget for one year alone, but we spent now a total of $42 million for the cost of desegregation of the Boston schools.

I am sure that you see for our size that is a staggering burden to carry. We have not been parsimonious about school functions, Mr. Chairman, I want that made clear. Our expenditure is one of the highest in the American system. In the last 2 years we spent better than $60 million extra of the school budget to meet the cost and to provide normal education.

MINIMAL FEDERAL AID

But, the fact of the matter is that the Federal help that we received has not been very much, specifically about $4,500,000, which is less than 10 percent of the total appropriations that we have been meeting or made to meet.

In the last 2 years, surprising enough, that amount is less than 1 percent of the total amount of money that is available throughout the country over the last 2 years. What I probably would like to do is to make two requests and that is, first, that the need is immediate. In response to the Senator's earlier question to Senator Kennedy, we need it in this fiscal year. Our fiscal year runs from July to July, but this bill appropriation would allow that help to come from September of this year, and that is very important to us in terms of our financial burdens that we are carrying, which I said earlier is considerable, even beyond the question of school discrimination.

We face all of the burdens of our cities, that obviously our national headlines cry out daily the inability to float our bonds, having to halt our capital improvement progress in Boston cases. It is embarrassing to say we have lost our rating from a grade A to a double BA rating, and that also added to our fiscal burden.

It is a need that is immediate and real. I hope that the decision will be allowed within the Commissioner's hand to supplement and help us beyond the developmentation that we have faced in the past.

PROBLEM OF BOND ISSUES

Senator MAGNUSON. I want to say that that the fiscal problem of the schools does not particularly lead to busing. We have a serious problem in my State, and we are not burdened with a court order of busing. We still have a serious problem with bond issues.

Bond issues have been turned down, and the legislature is wrestling with it now. I do not know if this would be a profitable lesson with the idea of having a State bond issue for schools. If it is a proposal, I just do not know.

When you have a court-ordered busing you have, in my opinion, additional burdens put on any way you look at it. We appreciate your testimony.

I believe Senator Brooke has a question.

RESTRICTIONS ON ESA FUNDS

Senator BROOKE. Mr. Mayor, one thing I would like to straighten out, and I am most sympathetic to the fiscal plight of the city of Boston. But we are here talking about ESA first.

Now, ESA funds are restricted. They can only be used for certain purposes. They certainly cannot be used as the mayor well knows for

the purpose of busing. They cannot be used for the busing or anything that is connected with busing per se. On the other hand, there may be other fiscal problems which the mayor has well spelled out in his very detailed statement that would not qualify for ESA funds. It would require a plan to be submitted to HEW, and they would then have to go over that plan and make a determination as to whether this money would qualify for such things as the training of teachers and what not.

I just do not want the mayor going away believing that even if we were able to get the $50 million under the Jackson proposal that that would solve the financial problem of the city of Boston or help to solve the financial problem of any other city that is going through school desegregation.

It would help to a degree, but it is well spelled out in the law as to how this money can be used.

That is not to say that we are not going to get the money from ESA. I am just trying to say that we might want to consider, and this question has been raised many times before, as to whether a city or State would have to bear, say, the expenses of a policy which has been established by the Federal Government.

I remember the Vietnam war case, for example, we had a base up in Chesapeake, Mass., and the city of Chesapeake tried to get money from the Federal Government because the Federal Government was responsible for the Vietnam war, and no money came from the Federal Government to help the city of Chesapeake, and they had to put out police and overtime and all of the rest of it to curtail some of the demonstrations that were taking place in the city of Chesapeake.

This occurred around the country. I just want you to clearly understand what this amendment would and would not do.

Mr. WHITE. I tried to acknowledge that in my statement, and I capsuled my statement.

PREPARED STATEMENT

Senator MAGNUSON. We will put your statement into the record.

Mr. WHITE. Thank you very much, Mr. Chairman.

[The statement follows:]

Mr. Chairman,
Senator Brooke,
Senator Jackson,
Senator Kennedy:

Thank you for the opportunity to testify on the appropriation you are considering today.

Before I outline my position I think it's important to state at the outset what we are not talking about. School desegregation, as everyone knows, has become an extremely volatile issue and reasoned discussions about it are becoming increasingly rare. It is not my purpose to begin a debate on busing here -- it is certainly not an appropriate forum.

My city is, in fact, carrying out a court order to desegregate its schools and I don't anticipate any turning back from that course. So I will discuss neither the pros and cons of school desegregation nor the feasibility of particular court remedies.

And I have not come here to argue that the Federal Government step in to aid a profligate and wasteful city whose fiscal plight is a result of its own mismanagement. We have some justifiable pride in our frugality in Boston.

- - - Cost effective budgeting and

- - - A four year old austerity program have helped us blunt the effects of the national recession.

But whatever our managerial skill we are finally unable to avoid the inexorable trends that are bringing cities to their knees across the country. The recession has reduced our revenues and increased the demands for city services. The collapse of the municipal bond market threatens our ability to meet outstanding obligations. The necessary recourse recourse:

- - - Stalled capital improvements

- - - Layoffs of city workers

- - - cuts in services

- - - and increased taxes.

All of these measures are deepening the recession in Boston and the rest of the nation's cities.

We had the unfortunate experience just last month of having our city's bond rating dropped two notches by Moody's from "A" to "BAA." That drop will further reduce our ability to go to the capital markets.

We felt that the new rating was unfair. In fact we asked the people at Moody's how they arrived at that decision. Every one of the factors they cite were completely beyong our control --

- - - The New York City crisis

- - - The Commonwealth of Massachusetts' fiscal difficulties

- - - And prominent on the list -- the costs of school desegregation.

In short we are a city in trouble -- trouble not entirely of our own making -- but no less painful just the same.

Boston faces an operating deficit this fiscal year of 33 million dollars. 24 million of that is directly attributable to the desegregation requirements of the Federal Court.

Last fiscal year we managed by tightening our belts to avoid a deficit. It meant absorbing $18 million in desegregation costs for one year.

We have now spent $42 million in an all-out effort to implement the court order. That would be a considerable sum for a city to spend in good times.

And we are not a city that is parsimonious about educational spending. Boston's per pupil expenditure is among the highest of American cities. We have increased the school budget about $60 million in two years although enrollment has dropped drastically in that period.

In other words we have not been unwilling to spend heavily for schools but our generosity cannot keep pace with the demands.

The Federal Government through the Emergency School Assistance Act has contributed $4.5 million to Boston's desegregation effort in the last two years. That figure is barely 10% of the total expense.

A further difficulty is that HEW's current interpretation of the administrative regulations of E. S. A. A. prohibits us from using that money to pay for the most costly items -- police overtime and transportation expenses.

And finally it's difficult to understand a distribution formula that has allotted Boston only 1% of the total federal desegregation aid for the last two years.

I have come then to make two requests. The first is that Senator Jackson's proposal be adopted -- that a special emergency appropriation of $50 million be included in the second supplemental appropriation bill now before this Committee.

The second is that this Committee suggest to HEW that the now very restrictive interpretation of E. S. A. A.'s regulations be relaxed to allow us the flexibility to put the money where it is most needed.

Mr. Chairman, that money will not end the recession in the nation or in our cities. But it would hold out the hope that Boston (and the other cities undergoing desegregation) can avoid a financial catastrophe in 1976.

But certainly a legitimate question is why should the Federal Government help cities like Boston pay for school desegregation at all?

The answer, essentially, lies in a pragmatic view of the situation. As Mayor, I have broken my back to implement that court order and I've tried to keep the city solvent at the same time. But those two objectives will become completely incompatible if we don't get some relief soon.

If we are forced to keep spending at the present rate our school department will run out of money some time in May. If that happens we will have to close the schools.

-- We have no surplus from other departments or programs

-- Our bond rating drop precludes borrowing the money

-- And a special tax levy would be unconscionable.

We have, then, the irresistible force of school desegregation confronting the immovable object of city insolvency.

As things stand now, federally mandated school desegregation threatens to bankrupt our cities.

We all recognize the conflict and upheaval that busing has engendered in Boston and Louisville -- the civil strife that has erupted in these cities.

Those tensions may be in large part unavoidable and may only fade with the passage of time. But we can only make matters worse and heighten the hostility and alienation of city residents by imposing severe financial penalties as yet another burden of desegregation.

Racial discrimination is not Boston's problem or Louisville's problem. The entire nation has a stake in the success of the desegregation process -- a stake which justifies enlarged Federal commitment.

In the long run there will be nothing gained for Black or White children if the cities in which they live are impelled toward bankruptcy by court-imposed remedies.

I urge the speedy adoption of the supplemental appropriation.

COST OF WORK WITH UNIVERSITIES

Mr. WHITE. I want to say to Senator Brooke, who has been personally very helpful to me, that I understand the parameters of the program. But we could be ordered to do these things. A good example of that is the cost involved in working with the university on those programs, and I take it that ESA is able to aid here. That would be a burden that we would have to assume otherwise. That is the area to which I am advising my colleagues that it would be helpful in that regard, within those parameters.

BOSTON DEFICIT

Senator MAGNUSON. Now, Mr. Mayor, another question that I have. I notice that you said that the deficit was $24 million, and Senator Jackson said to comply with the order, Boston is faced with a $34 million deficit this year.

Mr. WHITE. Yes.

Senator MAGNUSON. Just for the record, I want it to be clear, is it $24 million or $30 million?

Mr. WHITE. I think it is $24 million. It is a total of $33 million all total that we stand deficit, it is probably a little larger at this point, but I would say a fair figure is probably about $24 million to $26 million, at the outside.

We were hoping and we are talking in terms of what is the total State allocation. It would be about $15 million under this proposal, but obviously we would hope that Boston would get a good percentage of that.

Senator MAGNUSON. There has been some discussion that if the money is appropriated by the Congress that we leave the distribution up to the discretion of the Commission of Education.

Mr. WHITE. I am very much in support of that.

Senator MAGNUSON. There was some discussion of this at our hearings on the President's budget request.

Mr. WHITE. Well, I do not know whether it changes it. I have forgotten.

Senator BROOKE. I want to enlarge it from 5 to 15 percent.

Mr. WHITE. That was it. He said that he was sympathetic, but he really did not want to go beyond that.

VARIOUS COMMUNICATIONS AND PREPARED STATEMENTS

Senator MAGNUSON. At this point in the record, I would like to insert various communications and prepared statements which have been submitted by persons interested in the problems facing many areas of the United States regarding emergency school assistance.

[The information follows:]

LETTER FROM KEVIN H. WHITE

CITY OF BOSTON

OFFICE OF THE MAYOR

CITY HALL BOSTON

March 8, 1976

Terrell H. Bell
Commissioner of Education
Department of Health, Education and Welfare
300 Independence Avenue, S. W.
Washington, D.C. 20036

Dear Commissioner Bell:

It is my understanding that the Department of Health, Education and Welfare's Office of Education, in an orally-communicated administrative interpretation, has construed the Emergency School Aid Act to prohibit the granting of funds for court-approved and ordered activities, even though such activities are eligible in all other respects. I am writing to you to secure an administrative determination that activities incident to desegregation, which would be ordinarily eligible for E.S.A.A. funding, remain eligible, despite the inclusion of those activities in a court order.

Since June, 1974, the City of Boston has been under orders of the United States District Court for the District of Massachusetts to desegregate its schools. The desegregation plan being implemented during the current academic year is more comprehensive than the orders which are being faced by other cities in the country. The plan, called Phase II, and related court orders, provide for activities and projects such as:

- an office of implementation for desegregation,
- transitional teacher aides,
- contracts with local colleges and universities for the improvement of education in various schools,
- development of curricula for, and the conduct of innovative educational programs in a system of magnet schools;
- vocational education,
- community participation through citizen advisory councils,
- alteration and repairs of existing school facilities;
- other administrative and auxillary services.

The plan has required the additional expenditure of approximately 20 to 25 million dollars for the current fiscal year. The need for federal financial assistance is acute.

The Emergency School Aid Act, 20 U.S.C. 1601 et seq., was adopted four years ago to meet special needs incident to the elimination of minority group segregation and discrimination. Although Boston received a significant grant under the Act during the last year (FY'76) - approximately 2.6 million dollars -- I believe that the prioritization of projects included in Boston's application, and the resulting grant level, are being improperly restrained by the O.E. interpretation of the Act.

It fs my belief that the Office of Education has misinterpreted the Emergency School Aid Act and, through its administrative interpretation, has barred projects from eligibility in a manner which is clearly contrary to both the intent of Congress and judicial interpretation of proceeding

regulations which are similar, in all pertinent aspects, to the regulations currently in force.

The Intent of Congress:

The Emergency School Aid Act was based on a finding by Congress that "the process of eliminating or preventing minority group isolation and improving the quality of education for all children often involves the expenditure of additional funds to which local educational agencies do not have access." 20 U.S.C. 1601(a). A stated purpose of the Act was to provide financial assistance to meet the special needs incident to elimination of minority group segregation and discrimination. 20 U.S.C. 1601(b)(1).

The applicability of the intent of Congress to financially assist localities in the process of eliminating or preventing minority group isolation does not vary with the presence or absence of a court order. Insofar as the Act notes the distinction between court-ordered and non-court-ordered plans, it is noted in the context of mandating consideration of voluntary plans equal to that of court-ordered plans. 20 U.S.C. 1609(d)(1). The presumption of Congress was that local educational agencies implementing court-ordered desegregation plans would be favored.

There is no language in the Emergency School Aid Act itself or, indeed, in the Regulations promulgated by the Department of Health, Education and Welfare, which would exclude from consideration court-ordered or approved desegregation related activities.

The sole statutory basis for the administrative interpretation forbidding aid for court-ordered projects is the "non-supplant" policy. At various points in the Act and Regulations, it is stated that federal funds are not to supplant local funds so as to relieve localities of some of their former burdens. The Emergency School Aid Act provides that funding "shall be available for programs and projects which would not otherwise be funded," 20 U.S.C. 1606(a), and that it should be used to "supplement and, to the extent practicable, increase the level of funds, that would, in the absence of (the Act).. be made available from non-Federal sources..." 20 U.S.C. 1609(a)(10).

Although it may be strictly true that programs ordered be a court will be "otherwise" funded by a locality on the pain of contempt of court, the intent of the "non-supplant" provisions is more accurately reflected in the requirement of the Regulations that an applicant local educational agency give assurances that its expenditures during the year of application are not less than in previous years. 45 C.F.R. 185.13(1). It was undoubtedly the intent of Congress that Emergency School Aid Act funds not be used to replace local funding and diminish local effort. In Boston, where school expenditures have increased in the face of declining student enrollment, diminution of local effort is not occurring. At the same time the effectuation of the intent of Congress to assist localities incurring additional expense in the desegregation process should not be negated by the presence of a court order.

That the administrative interpretation is based on an improper foundation is graphically demonstrated by considering the specific Congressionally approved programs enumerated in the Act. To achieve its purpose, Congress provided for funding for specific programs and projects, including special remedial services, professional staff, teacher aides, inservice teacher training, counseling, new curricula, career education, innovative interracial programs, community activities, administrative services, planning and evaluation, and facility remodeling, 20 U.S.C. 1606-1608.

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To suggest that Congress intended to prohibit the use of Emergency School Aid Act funds for court-ordered activities incident to desegregation that would otherwise be eligible for funding, leads to incongruous and irrational results. In the Boston school desgregation case, the District Court has approved and ordered, as reasonably necessary to successful implementation of the student desegregation plan, many of the specific activities which Congress perceived to be necessary to successful desegregation. Yet, once the court had approved and ordered any such activity, it was excluded from eligibility for grant funding by the O.E. interpretation.

The effect of the administrative interpretation of the Act is that Emergency School Aid Act funds are not being used to implement the specific programs which Congress and the District Court agree are necessary and appropriate to successful desegregation of our schools.

Boston, like many cities, is in the midst of a financial crisis, and can ill-afford to finance these activities.

The Judicial Interpretation:

Regulations promulgated under the Emergency School Assistance Program predecessor to the Emergency School Aid Act and under the Emergency School Aid Act which were in effect through the first half of 1973 were considered by the United States District Court for the Middle District of Tennessee in Kelley v. Metropolitan County Board of Education, Tenn., 373 F. Supp. 540 (M.D. Tenn. 1973) (Gray, Jr., C.J.)

Kelley involved the refusal of the Department of Health, Education and Welfare, based on administrative interpretation, to consider a request submitted by Nashville School authorities for funding court-mandated expenses (transportation). The Court held that such administrative interpretation was not within the ambit of administrative discretion under the then-applicable statute, and that HEW did not have the discretion to deny all such requests by adoption and enforcement of a blanket policy that removed such requests from any legitmate consideration whatsoever. The Court concluded, based on the legislative history of the enactment, that the funding of court-ordered activities was contemplated and intended by the Congress.

Although the Educational Amendments of 1974 may dictate a result different than that of Kelley, with regard to the particular activity of school transportation, the holding of Kelley as applied to other court-ordered activities remains unchallenged. The court, in Kelley, had before it the "non-supplant" provisions of both the Emergency School Aid Assistant Program and the Emergency School Aid Act. Such particular provisions, which have not been amended or modified since Kelley, were interpreted in accordance with a Congressional intent to require consideration for funding of court-ordered activities.

In summary, it is my view that the Office of Education, in excluding court-ordered activities from eligibility for funding, is administering the Emergency School Aid Act in a fashion that is consistent neither with the intent of Congress nor the relevant judicial finding. Given Boston's pending ESAA grant application for FY '77, I would appreciate your administrative review of this problem at the earliest possible moment.

Thank you in advance for your consideration.

Sincerely,

Kevin H. White

LETTER FROM HERMAN R. GOLDBERG

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
OFFICE OF EDUCATION
WASHINGTON, D.C. 20202

Mr. Gar Laganowich
Professional Staff Member
Committee on Appropriations
United States Senate
Washington, D.C. 20510

February 27, 1976

Dear Gar:

You asked for information about certain questions contained in Mayor Kevin H. White's statement of February 25 before the Senate Appropriation Subcommittee on Labor-HEW. The items you identified (in quotations) and our comments follow, seriatum:

1. "Boston faces an operating deficit this fiscal year of $33 million dollars. $24 million of that is directly attributable to the desegregation requirements of the Federal Court."

   We are unable to comment on the operating deficit of the city of Boston and the statement that "$24 million ... [of the $33 million] is directly attributable to the desegregation requirements of the Federal Court". Our records relate to requests from the Boston Public Schools to the Department of HEW for funds appropriated for the Emergency School Aid Act (ESAA). Further, our records are limited to the information included in their applications for assistance under this Act.

2. "A further difficulty is that HEW's current interpretation of the administrative regulations of ESAA prohibits us from using that money to pay for the most costly items — police overtime and transportation expenses."

   Activities authorized under the Act are set out in Section 707 of the legislation. None of these actvities authorize police overtime and transportation expenses. Further, Section 420 of Title II of P.L. 93-380 prohibits the use of Federal funds for the transportation of students or teachers or for the purchase of equipment for such transportation in order to overcome racial imbalance or to carry out a plan of racial desegregation. The regulations are consistent with these provisions of the statute and govern the administration of the program.

3. "... finally it's difficult to understand a distribution formula that has allotted Boston only 1% of the total Federal desegregation aid for the last two years."

   The total State apportionment level for Massachusetts for fiscal year 1975 and fiscal year 1976 was $1,448,878 and $1,459,936, respectively. These amounts were determined through a formula described in Section 705(a)(1)

of the Act. Briefly, the amount is derived by dividing the number of minority students between ages 5-17 residing in the State by the number of minority children (ages 5-17) residing in the Nation, with this product multiplied by the funds appropriated under the Act. This formula cannot be changed without Congressional action.

It is important to note that during the regular funding cycle in fiscal year 1975, the Boston Public Schools received most of the funds allotted to the State of Massachusetts, together with an additional discretionary award in the amount of $1 million, authorized under Section 708(a) of the Act. These funds are available for obligation during the 1975-76 school year.

You should also know that the Boston Public Schools was unable to encumber the full amount of the $1.9 million emergency special project award from the discretionary authority awarded for the Spring semester of the 1974-75 school year. Of this amount $600,000 remained unencumbered as of June 30 and was permitted to be carried forward for obligation in the 1975-76 school year.

4. "The second [request] is that this committee suggest to HEW that the now very restrictive interpretation of ESAA's regulations be relaxed to allow us the flexibility to put the money where it is most needed."

The regulations governing the administration of ESAA cannot be amended to authorize expenditures for activities not authorized in the statute. Activities authorized under ESAA are educational in nature and relate directly to the support of the educational and programmatic aspects of school desegregation.

Sincerely,

Herman R. Goldberg

Herman R. Goldberg
Associate Commissioner
for Equal Educational
Opportunity Program

STATEMENT OF WILLIAM J. BELANGER

DISTINGUISHED SENATORS, LADIES AND GENTLEMEN:

MY NAME IS BILL BELANGER. I AM RESEARCH AND DEVELOPMENT CO-ORDINATOR FOR JEFFERSON COUNTY, KENTUCKY, AND AN AIDE TO COUNTY JUDGE TODD HOLLENBACH, JEFFERSON COUNTY, WHICH INCLUDES THE CITY OF LOUISVILLE AND HAS A POPULATION OF 715,000, IS THE LARGEST COUNTY IN KENTUCKY. IT IS ALSO A COMMUNITY IN TURMOIL OVER SCHOOL DESEGREGATION.

THIS STATEMENT CONTAINS THE PHILOSOPHY OF JUDGE HOLLENBACH AND OF COUNTY GOVERNMENT AS WE ANALYZE SENATOR JACKSON'S INITIATIVE AND THE SUBJECT OF SCHOOL DESEGREGATION GENERALLY. ALTHOUGH THIS IS A SHORT STATEMENT, THERE ARE SEVERAL POINTS THAT WE WANT TO MAKE ABOUT THESE MATTERS:

1. WE ARE HAPPY TO SUPPORT SENATOR JACKSON'S PROPOSAL TO INCREASE THE ESAA DISCRETIONARY FUND BY $50 MILLION. THIS IS THE KIND OF POSITIVE APPROACH THAT HAS BEEN MISSING IN PREVIOUS CONGRESSIONAL DEBATES ON SCHOOL DESEGREGATION. THE LAST TIME WE APPEARED BEFORE THE SENATE, JUDGE HOLLENBACH WAS TESTIFYING ON A PROPOSED CONSTITUTIONAL AMENDMENT TO BAN BUSING. THE JUDGE CALLED THOSE HEARINGS "AN ADMISSION OF FAILURE." WE ARE GLAD TO SEE THAT SENATOR JACKSON IS MOVING IN A POSITIVE DIRECTION. IT APPEARS THAT SENATOR JACKSON'S PROPOSAL CLOSELY PARALLELS A BILL DRAFTED BY JUDGE HOLLENBACH, WHICH HAS JUST BEEN INTRODUCED INTO THE KENTUCKY GENERAL ASSEMBLY. (A COPY OF THE BILL IS ATTACHED TO THIS STATEMENT.) THE COUNTY'S BILL WOULD PROVIDE STATE FUNDS TO HELP SCHOOL SYSTEMS INCREASE EQUALITY OF EDUCATIONAL OPPORTUNITY OR REMOVE VESTIGES OF DISCRIMINATION. WE HOPE THE SECRETARY OF HEW WOULD USE THE PROPOSED ADDITIONAL ESAA FUNDS TO AID SCHOOL SYSTEMS TO MAKE SCHOOL DESEGREGATION AN OPPORTUNITY FOR A BETTER EDUCATION FOR ALL. WE EXPECT THAT THE JEFFERSON COUNTY SCHOOL SYSTEM SHOULD QUALIFY FOR A SIGNIFICANT PORTION OF THESE EXTRA FUNDS.

BUT WHILE SUPPORTING SENATOR JACKSON'S PROPOSAL, WE MUST EXPRESS OUR DISAPPOINTMENT THAT THIS IS ESSENTIALLY A STOPGAP MEASURE. FOR TWO YEARS NOW, CONGRESSMAN RICHARDSON PREYER HAS BEEN TRYING TO GET CONGRESSIONAL ACTION ON HIS LEGISLATION WHICH OFFERS A COMPREHENSIVE APPROACH TO EQUAL EDUCATIONAL OPPORTUNITY. IT IS UNFORTUNATE THAT THIS THOUGHTFUL LEGISLATION HAS NOT RECEIVED THE ATTENTION AND DEBATE THAT IT DESERVES. WE EARNESTLY HOPE THAT THE MEMBERS OF THIS COMMITTEE WILL WORK WITH CONGRESSMAN PREYER ON HIS BILL.

2. IT IS NO SECRET THAT THIS IS A PRESIDENTIAL ELECTION YEAR. THERE IS A PRESIDENTIAL PREFERENCE PRIMARY NEXT WEEK IN MASSACHUSETTS, A STATE WHICH KNOWS THE EMOTIONS THAT CAN BE AROUSED OVER COURT-ORDERED BUSING AS A MEANS OF DESEGREGATION. NO DOUBT THERE IS A TEMPTATION AMONG NATIONAL POLITICIANS TO PROMISE SOME QUICK PROGRAM OR SOLUTION TO THE PROBLEM. BUT LET US SAY AS CLEARLY AS WE CAN: THERE IS NO ROOM FOR SELF-SEEKING ACTIVITIES OR PARTISAN POLITICS ON THE SUBJECT OF OUR SCHOOLS AND OUR SCHOOLCHILDREN. WHOEVER BECOMES PRESIDENT THIS YEAR WILL NEED TO HAVE A UNITED COUNTRY PURSUING A UNITED STRATEGY TO ACHIEVE EQUALITY OF EDUCATIONAL OPPORTUNITY.

3. IT MAY INTEREST YOU TO KNOW THAT JUDGE HOLLENBACH, IN HIS CAPACITY AS CHIEF EXECUTIVE OF JEFFERSON COUNTY, HAS INTERVENED IN OUR LOCAL DESEGREGATION CASE. THE JUDGE'S GOAL IS TO ESTABLISH THAT SYSTEM-WIDE BUSING FOR DESEGREGATION IN OUR COUNTY IS UNPRODUCTIVE AND ACTUALLY FOSTERS RESEGREGATION.

THE JUDGE WILL SEEK TO INTRODUCE POSSIBLE ALTERNATIVE PLANS TO ACHIEVE DESEGREGATED SCHOOLS, WITHOUT THE SOCIAL UPHEAVAL OF THE PRESENT PLAN. HE HOPES TO RE-ESTABLISH SOMETHING THAT HAS BEEN LOST IN JEFFERSON COUNTY: COMMUNITY SUPPORT FOR DESEGREGATION. JUDGE HOLLENBACH IS SERIOUS IN HIS COURT ACTION; BUT WHETHER OR NOT HE SUCCEEDS, HE WANTS YOU TO KNOW THAT THE CITIZENS OF JEFFERSON COUNTY--BOTH BLACK AND WHITE--ARE LOOKING TO CONGRESS FOR LEADERSHIP. A SURVEY RELEASED LAST WEEK SHOWS THE DIVISIVENESS

THAT HAS BEEN INTRODUCED INTO OUR COMMUNITY IN THE PAST SIX MONTHS. THE SURVEY SHOWS THAT RACIAL TENSIONS AND ECONOMIC CLASS DIVISIONS HAVE BECOME MUCH MORE PROMINENT. WE LOOK TO OUR REPRESENTATIVE FEDERAL ASSEMBLY FOR ASSISTANCE AND GUIDANCE. WE HOPE THAT YOU WILL ANSWER. THANK YOU.

AN ACT relating to educational opportunity.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. A new section of KRS 157.010 to 157.990 is created to read as follows:

This Act may be cited as "The Kentucky Educational Opportunities Act of 1976."

Section 2. A new section of KRS 157.010 to 157.990 is created to read as follows:

As used in this act, unless the context otherwise requires:

(1) "equal educational opportunity" means unrestricted access to the resources of a school system, reflecting differences in student interests and abilities.

(2) "board of education" means the governing body of a school district, as defined in KRS Chapter 160.

(3) "voluntary transfer program" means any organized policy allowing or encouraging transfers of students, staff, or faculty for the purposes of increasing equal educational opportunity or removing vestiges of past discrimination.

(4) "instructional aids" means physical items which assist the educational process, including but not limited to: maps, projectors, laboratory equipment, videotape equipment, and television apparatus.

(5) "student enrichment" means any program designed to expand cultural or intellectual opportunities for students, including, but not limited to: field trips, concerts, arts programs, internships, and lectures.

(6) "special teacher training" means any program designed to increase the competence or improve the educational skills of an instructor.

Section 3. A new section of KRS 157.010 to 157.990 is created to read as follows:

The General Assembly and the people of the Commonwealth of Kentucky hereby re-affirm their commitment to provide every elementary and secondary schoolchild in the Commonwealth with an equal opportunity for a quality education. The General Assembly and the people of Kentucky, in pursuing this commitment, will continue to seek ways to remove barriers to equal educational opportunity. It is the intent of this Act to provide support for projects that will: a) increase the ability of a given school system to provide equal opportunity; and b) remove vestiges of past discrimination.

Section 4. A new section of KRS 157.010 to 157.990 is created to read as follows:

(a) There shall be established a "Kentucky Educational Opportunities Fund." The Superintendent of Public Instruction of Kentucky shall administer the Fund, according to the standards and guidelines set up under this Act. The Superintendent shall establish and publish procedures for formal application and administrative appeal.

(b) The Superintendent shall make grants from the Fund to boards of education which apply and qualify for support under this Act. In the event that the Superintendent receives qualified applications which total more than the Fund, he may make partial grants or refuse applications based on the following criteria: (i) the ability of a given school board to accomplish the goals set forth in its application; (ii) the extent to which a given project, if funded, would increase equality of educational opportunity and remove vestiges of discrimination; (iii) the degree of originality exhibited by a given project; and (iv) the possibility that a funded project may be applicable in other school districts.

Section 5. A new section of KRS 157.010 to 157.990 is created to read as follows:

Any project which increases equality of educational opportunity or removes vestiges of past discrimination shall be eligible for funding. Eligible projects may include, but are not limited to: capital construction, voluntary transfer programs, instructional aids, student enrichment, and special teacher training.

89-276 O - 76 - 5

No funds provided under this Act may be used to directly support any program which involves involuntary assignment of pupils, teachers, or staff on the basis of race. No funds provided under this Act may be used to support any program, which in the judgment of the Superintendent, will increase the degree of racial segregation within a given school system.

Section 6. A new section of KRS 157.010 to 157.990 is created to read as follows:

The amount of the Fund shall be fixed for the biennium in the State Budget, at a level which the General Assembly considers sufficient for the purposes of the Act.

Section 7. A new section of KRS 157.010 to 157.990 is created to read as follows:

If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

Section 8. A new section of KRS 157.010 to 157.990 is created to read as follows:

The effective date of this Act shall be 90 days after passage.

STATEMENT OF HARVEY I. SLOANE, MAYOR OF CITY OF LOUISVILLE, KENTUCKY

We would first like to express our appreciation to this subcommittee and the other committees of the Senate which are investigating this difficult problem of school desegregation.

Last fall we testified before the Senate Committee on the Judiciary concerning the mechanisms by which school desegregation has been ordered. At that time, we felt that the means by which desegregation is ordered cannot be separated from the end costs which are involved. One of the problems we saw in Louisville was a lack of concern by the federal decision makers concerning the ultimate cost of a particular court-ordered desegregation plan -- cost both in terms of social impact and in terms of dollars and cents.

As local officials, we can tell you that school desegregation in many cities today places unbelievable financial burdens on local school boards and on local governmental units.

THE EFFECT ON THE EDUCATIONAL SYSTEM.

Under Kentucky law, local boards of education are funded by the state based upon the average daily pupil attendance. If a pupil does not come to school, the school board eventually loses funds from the State. Estimated lost revenue from pupil absenteeism in Louisville and Jefferson County has exceeded three million dollars. In addition, the actual direct costs of implementing the desegregation plan have exceeded four million dollars.

COSTS TO LOCAL GOVERNMENT

As a result of disturbances in Louisville and Jefferson County in connection with the implementation of court-ordered desegregation, extensive police and city personnel overtime was incurred. The indirect costs in terms

of public officials' time diverted from other matters to desegregation is inestimable. However, through November of 1975, the City of Louisville incurred direct costs associated with desegregation in excess of $600,000.00.

With declining local tax bases, inflation, unemployment, and lost revenue directly associated with desegregation, someone must come to the aid of local governments and school boards and replenish these losses.

Additional Federal aid to school districts undergoing school desegregation is needed for an even more basic reason. Our feeling and that of many educators is that the long-term solution to school desegregation problems does not reside in the courts. Many of the problems which have led to court-ordered desegregation have resulted from a lack of planning by the school boards to insure that school integration is promoted. In addition, because of the high costs involved, school boards have been slow to seek alternatives to court-ordered desegregation. Such alternatives as magnet schools, school pairing, incentive payments to encourage attendance at minority schools, and the like, all require extensive planning and funding.

Perhaps the most basic way of effecting school integration is by selecting appropriate sites for new school construction and by closing older schools whose locations foster black-white separation. All of this costs money.

Discretionary federal funding to local boards undergoing desegregation is therefore essential.

In October of this year in our testimony before the Judiciary Committee, we suggested a coordinated approach by the federal funding agencies, federal enforcement agencies, and the courts. Under the present system, the courts on the one hand and the "funders" on the other hand, have not seriously attempted to coordinate their activities. We re-affirm this proposal.

For this reason and for reasons of efficiency of school desegregation and administration, we suggested the creation of a special desegregation court, separate from federal district courts, which would decide and monitor school desegregation cases. Other agencies, such as the Office of Education, would be required by law to channel substantial portions of their funds into the implementation of school desegregation plans administered by the court. In this way, long-term "alternatives" could be initiated.

Again I commend this subcommittee for considering important legislation in this area, but to consider funding aspects of the problem of school desegregation without considering and officially coordinating enforcement aspects of the school desegregation problem, is not to face the entire problem. Congress can bring order to the chaos now existing in this area by facing the problem of school desegregation squarely and creating a unified approach to the problem. The passage of the proposed legislation would be a starting point. That's all.

STATEMENT OF PAUL W. BRIGGS, SUPERINTENDENT OF SCHOOLS, CLEVELAND, OHIO

I welcome this opportunity to appear before this Committee of the United States Senate, as you seek to find additional funds to aid school districts in their attempt to mobilize programs dealing with racial isolation.

The Cleveland Public Schools are straining to provide the learning content and conditions most conducive to the growth of its urban pupils. These efforts must move forward in spite of factors which make the task more difficult. Countermanding the efforts at federal, state, and local levels are other forces and "facts of urban life." They continue to erode the gains made, and threaten the major urban cities of today. These urban centers are challenged with the problems of poverty, racial isolation, and finance.

POVERTY Cleveland is the largest city in Ohio. The school district is the largest in the state, enrolling nearly 7 per cent of all Ohio school children. However, our district has nearly 30 per cent of the children from welfare families in the state. The rapid growth of children on welfare during the period from 1965 to 1975 is clearly evident on the following Chart I.

FINANCE With respect to school finance, the amount of tax revenue available to the Cleveland Public Schools has declined steadily despite the fact that voters have increased their taxes 137 per cent since 1964. The decrease is attributable to a progressive lowering of taxable values in Cleveland. From 1969 to 1974 alone, the assessed valuation of real, public utility and tangible personal property combined has decreased over $205 million, from nearly $2.97 billion to $2.76 billion. The increase in millage rates is thus dissipated by the shrinking property tax base. (See Chart II.)

RACIAL ISOLATION

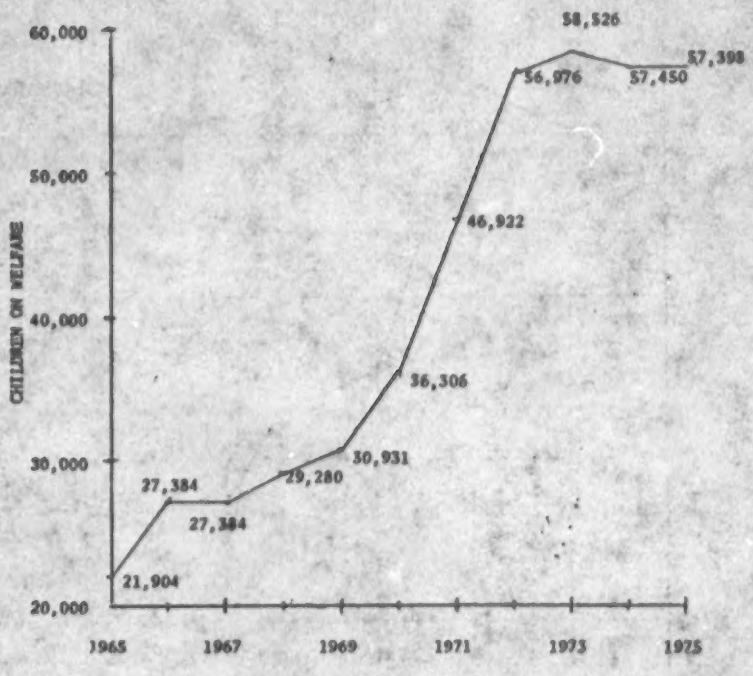
In Cleveland, we have succeeded in maintaining the stability of our black and non-black pupil ratio. Although black pupils continue to represent the majority (57%) of the school system's student body, this percentage has

CHART I

NUMBER OF SCHOOL-AGE CHILDREN ON WELFARE

CITY OF CLEVELAND

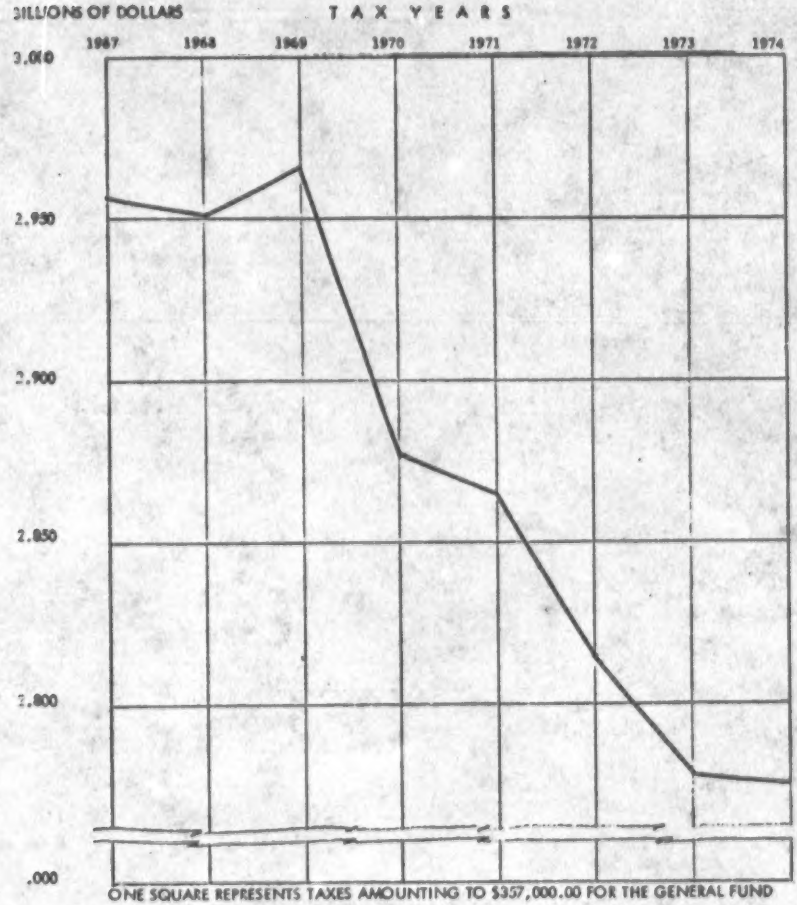
1965 - 1975



CLEVELAND CITY SCHOOL DISTRICT

TOTAL ASSESSED VALUATION
1967-1974 TAX YEARS
(TAX RATE TIMES VALUE COLLECTED FOLLOWING YEAR)

CHART II



ONE SQUARE REPRESENTS TAXES AMOUNTING TO $357,000.00 FOR THE GENERAL FUND

changed less than one-tenth of one per cent in the past five years. We feel that this stability would be greatly endangered if Cleveland were forced to suffer the negative effects of busing pupils for integration. If we are to solve the problem of racial isolation in the cities, we must find approaches that are not counterproductive. (See Charts III and IV.)

In Cleveland, we have taken the initiative to integrate teaching, supervisory, administrative, and non-certificated staff. Undoubtedly, these efforts to integrate staff have been a powerful force in stabilizing the black and non-black enrollment. Today, two of Cleveland's five Assistant Superintendents are black. In 1964, less than 10 per cent of the central office staff of the Cleveland Public Schools was non-white. This per cent has increased to 35 per cent by 1975. During the same ten-year period (1964-1975), the per cent of non-white principals has risen from 12 per cent to 45 per cent. The per cent of non-white assistant principals has increased from 25 per cent to 55 per cent. The efforts of the Cleveland Public Schools to integrate all levels of staffing have been unique in the Cleveland area and possibly in the nation. Of the eight largest school districts in Ohio, Cleveland has the highest percentage of black teachers (40%), black principals (45%), black assistant principals (55%), and black clerical employees (48%). In looking at other school systems in the nation, we find that in Boston where the black enrollment has increased to nearly 40 per cent, only 12 per cent of the teaching staff is black and only a very few black persons hold administrative or supervisory positions. San Francisco, with a black student enrollment of more than 30 per cent, had a black teaching staff of only 11 per cent in 1975.

The trend appears clear that large city school systems which have attempted to achieve racial balance by busing are becoming increasingly non-white. To provide quality integrated education, alternative methods must be employed to maintain the stability of black and non-black student enrollments.

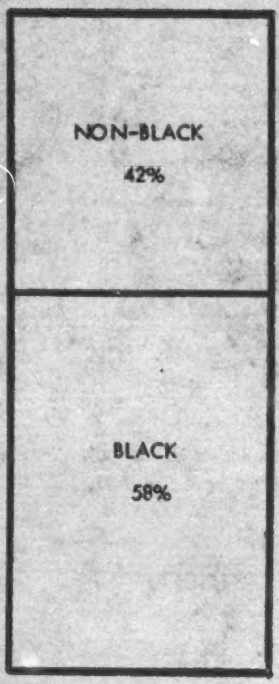
Cleveland Public Schools serve more than thirty ethnic groups with its school programs. The school system has been systematically moving

CHART III

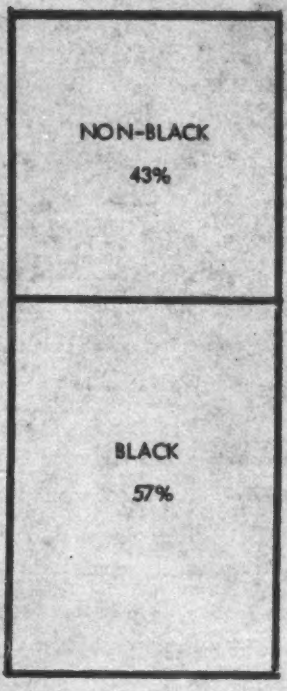
PERCENTAGE OF BLACK AND NON-BLACK PUPILS

CLEVELAND PUBLIC SCHOOLS

1970 - 1975



PERCENTAGE OF PUPILS 1970-71

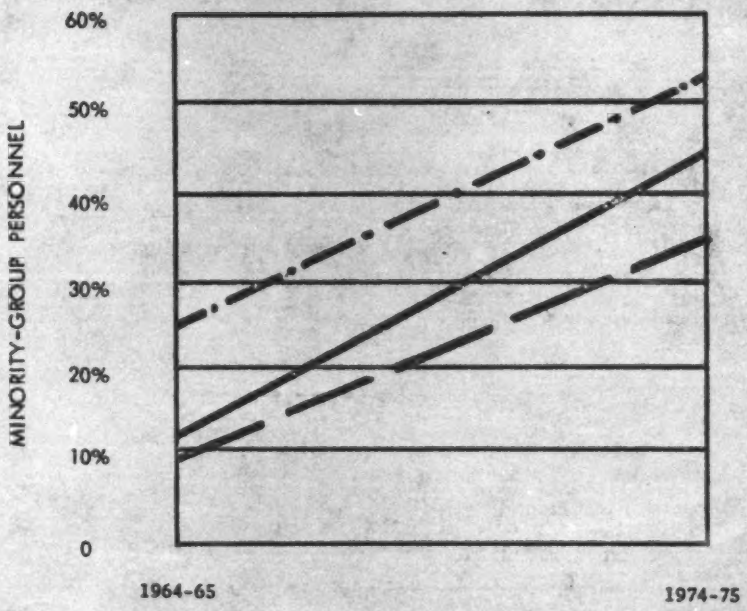


PERCENTAGE OF PUPILS 1974-75

CHART IV

PERCENT OF MINORITY-GROUP PERSONNEL

CLEVELAND PUBLIC SCHOOLS



to bring these children together through multi-faceted programs rather than by massive busing.

These types of programs are very expensive. Local school districts, unable to find financial assistance for these programs at the State and Federal levels, are increasingly forced to use general fund monies to meet this need. Since a sizeable amount of funding of these programs must be taken from the funding of regular programs, the regular programs become downgraded. Money above and beyond the school system's normal operating expenses is required.

EMERGENCY SCHOOL ASSISTANCE ACT

The Cleveland Public School System has experienced discouragement with its exclusion from funding under the Emergency School Assistance Act.

After having presented a plan for the "reduction of minority-group isolation" as early as March 23, 1973, and being advised to proceed on proposal development on April 6, 1973, a review of Cleveland's proposal was announced on May 8, 1973.

On May 29, 1973, after a conference of approximately three hours, it was determined that Cleveland could become eligible only if a written statement was made to the effect that the selection of a particular junior high school site prevented a near-by senior high school from becoming a racially isolated school.

It is important to note that after hearing Cleveland's explanation to the effect that the junior high school in question was placed on a site that would insure optimum integration, Cleveland was told by the Civil Rights Office staff that it was unfortunate but it appeared that this legislation tended to penalize such an effort. In short, if this school had opened segregated and had, through some procedure, been desegregated, eligibility would have been forthcoming.

This is but one of numerous, highly irregular experiences faced as we attempted to secure funding. We were further advised by the Office of Civil Rights in Chicago that if the Mayor of the City of Cleveland had signed the application, funding would have been forthcoming.

It is discouraging to know that a school district's policy and plan to effectively insure integration did not help in securing funding under this legislation. It is further confusing in view of the fact that the Cleveland proposals were described by the Office of Education as "exemplary." These proposals would have provided both strong educational components and a further reduction of racial isolation in the Cleveland schools.

It is difficult for personnel in the Cleveland Public Schools to understand how other urban school districts were given special considerations for determining eligibility when it was reported that their proposals did not meet the Emergency School Assistance Act regulations and guidelines.

It is disappointing that a plan approved by the State of Ohio and H.E.W. was never funded, apparently because the complexity and contradictions of the legislation and guidelines of ESAA served to exclude rather than include districts which had evidenced a strong commitment to reduce racial isolation and improve quality education.

CONCLUSION

Tentative estimates from the Ohio Department of Education show that from fiscal year 1974 to 1976, Cleveland's Title I allocation will decline to the lowest level in over six years. This will occur at a time when the number of poor children in our system are continuing to increase and at a time when we must strive to provide a pluralistic setting for all children--black and white, rich and poor. (See Chart V.)

For school systems to remain viable and to respond effectively to the needs created by an urban setting, it will be necessary for the federal government to:

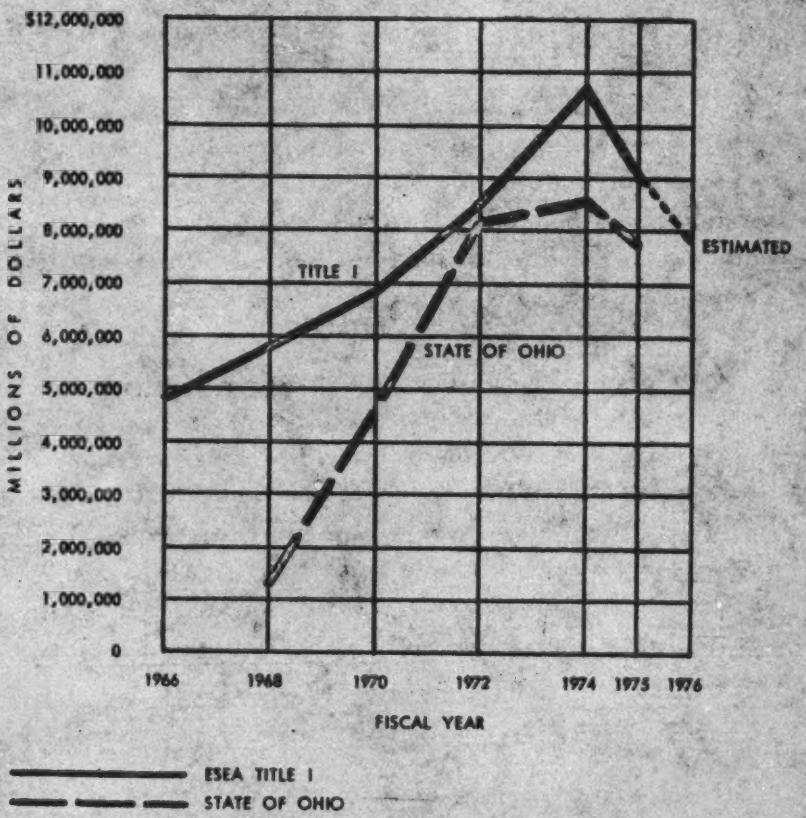
- provide categorical funds to serve the needs of urban children
- support alternative approaches to achieve integration of staff and of pupils
- insure that legislative intent is reflected in guidelines, regulations, and program implementations.

Working together, we can solve the problems of urban areas and provide quality education for every child.

CHART V

ALLOCATIONS FOR DISADVANTAGED PUPIL PROGRAMS

ESEA TITLE I AND STATE OF OHIO



LETTER FROM MEMBERS OF THE BOSTON CITY COUNCIL

Boston City Council
NEW CITY HALL
ONE CITY HALL SQUARE
BOSTON, MASSACHUSETTS 02201

February 24, 1976

Dear Senator Magnuson:

We the members of the Boston City Council wish to thank you for the opportunity to present to you and the other members of the Senate Appropriations Subcommittee on Labor, Health, Education and Welfare the facts of Boston's present financial situation brought about by the tremendous cost of desegregating our public schools under the mandate of the United States District Court for the Commonwealth of Massachusetts.

At the present time, city budget analysts are predicting a $33million dollar deficit for the City of Boston by May 1 of the current fiscal year with a total of $28million dollars of that figure directly attributable to Phase II of the desegregation order. It is anticipated that 1600 municipal jobs could be affected with an attendant decline in the delivery of vital city services in the areas of police protection and health care.

The city is faced with raising its property tax rate to offset the deficit, but the deficit of so large an amount would dictate a hike that would clearly be confiscatory. In addition, because of the forced busing aspect of the desegregation order, the City of Boston has already lost a sizeable segment of its tax base through the flight of the middle class to the suburbs. Our deepening fear is that the city's present financial crisis will heighten that flight until the tax base has eroded completely, thus leaving the city in a perpetual state of financial instability.

As elected officials, we look now to the Emergency School Aid Act of 1972, and specifically to the Second Supplemental Appropriation Bill of that Act now pending before your Subcommittee as a method of preventing our impending financial crisis and stemming the flow of middle class money and talent from the City of Boston. The Administration's appropriation request is clearly insufficient to meet the needs of our city and other municipalities throughout the nation faced with the same desegregation financing problem.

We urgently request that your Subcommittee consider the plight of our nation's cities and report favorably on the Second Supplemental Appropriation Bill of $50million. We honestly believe that the future of our city depends on favorable action.

Sincerely,

Albert L. O'Neil
Christopher A. Iannella
Lawrence S. DiCora
Patrick F. McDonough
Louise Day Hicks
James Michael Conley
Frederick C. Langone
Joseph M. Lepper

STATEMENT OF LOUISE DAY HICKS, BOSTON CITY COUNCIL PRESIDENT

MR. CHAIRMAN:

I wish to express my appreciation to you and to the members of this subcommittee for the opportunity to testify before you today on a subject of grave concern to the people of the city of Boston, Massachusetts.

I support Senator Henry M. Jackson's amendment to the Emergency School Aid Act of 1972 which will provide federal funds to cities currently under federal court orders to desegregate their public school systems.

I have been opposed to the forced busing of schoolchildren since it first reared its ugly head a decade ago. I assure you I am still opposed to it and shall continue to be opposed to it, but this is not my reason for appearing before this Committee. I appear before you because the city of Boston is in financial trouble which is fast approaching crisis proportions.

The middle class homeowner, the man and woman who conscientiously pay the tax bill each year for their little portion of Boston's earth, has either left, is in the process of leaving or will leave as soon as the property tax bill for the coming fiscal year is received in the mail.

On Tuesday, January 28, 1976, Moody's Investment Service lowered the credit rating of the city of Boston two steps from "A" to "BAA." Moody's action was clearly the result of that establishment's apprehension over what it termed Boston's "serious financial problems, including an impending deficit, strained tax base and unfunded pension liabilities of undetermined but large magnitude."

At the present time, city budget analysts are predicting a $33million deficit for the city of Boston by May 1, 1976. A total of $28million of that deficit is directly attributable to forced busing costs. Already, city workers have received layoff notices in anticipation of that deficit, and I might add, they are the workers at the lower end of our municipal salary scale. Again, it is the poorest who must bear the brunt of the financial effects of forced busing, just as they have been asked to bear the emotional brunt of it.

The city can raise its property tax rate but indications are it would have to be in the plus $20per thousand dollar evaluation range

to have even minimal effect. A property tax rate hike of this magnitude or even less would be clearly confiscatory and only serve as a further impetus to the exodus of the middle class. The push then will turn to shove, and the exodus from Boston will go unabated and I am afraid that not even the prohibition of forced busing would restore normalcy to the city's population pattern.

We have only had forced busing a little over 18 months. Now the bill is due and, believe me, there will be no stopping what is left of the remaining tax base, the middle class, as it rushes headlong north, west and south of the city of Boston for financial security just as in the past 18 months their socio-economic counterparts have left to provide physical and educational security for their children.

Right now in Boston, there are several tight pockets of middle class taxpayers who in the beginning vowed to stay and fight forced busing till the bitter end.

A "forced busing tax rip-off" could very well be that bitter end. The extent of despair in the City of Boston is evidenced by the proliferation of bumper stickers that read, "Last one out of Boston turn off the light."

Well Boston's light will never go out. I, for one, am staying in Boston because that light represents for me what it represented for our city's founders. They called it a "Beacon on a Hill," and that it has remained since 1631. The light will not go out with the help of this Committee, but I am concerned that it will flicker and dim for those people still left in the city for whom I have particular regard, for they are the future of Boston.

I am speaking of the young married couples, many of them financially promising and talented who just a few short years ago, decided that their futures and the future of Boston were one and the same. How can we expect them to maintain their residencies in Boston at a time when financial stability and educational advantages for their potential families and school-age children can be had more readily just a few miles down the Massachusetts Turnpike?

The poor will be left because they cannot afford to go anywhere else. Yes, the poor will remain to scratch out an existence on the remnants of a vital, throbbing center of cultural, scientific, educational and financial life once supported by middle class money and talent.

Yes, the poor will remain, but will the source of jobs for them, no matter how low-paying? New York City's experience has told us "no." Industry has left and is leaving New York City for suburban New Jersey, Connecticut and Westchester County along with the middle class. Yes, "the poor we will always have with us, but why must we continue, time and time again, to victimize them in the name of social experimentation and misguided idealism?

Mr. Chairman, I believe there is an option available to the City of Boston and to our sister cities throughout the nation who are faced with bleak economic futures because of the impact of desegregation financing on our municipal budgets.

You have before you today a Second Supplemental Appropriation Bill of $50million as an amendment to the Emergency School Aid Act of 1972. Passage of this amendment is mandated by the present state of financial affairs in the City of Boston.

Previous appropriations under the original Act have been clearly insufficient to meet the requirements imposed by federal court orders on the City of Boston and I believe that the present Administration's appropriations request would also fall far short of providing the City of Boston with enough funds to offset the cutbacks that would be necessary in the delivery of vital city services, especially in the areas of police and fire protection and health care. The insufficiency of previous funds is definitely borne out by the financial crisis facing Boston. This Subcommittee can insure a continuation of adequate police and fire protection and quality health care to the citizens of Boston.

On their behalf, I urge you to report favorably on the Second Supplemental Appropriation Bill now before you. By doing so you can aid in lifting the heavy toll the inflation-ridden costs of forced busing have had on the budget, and, therfore, the people of the City of Boston.

STATEMENT OF JOHN MCDONOUGH, CHAIRMAN, BOSTON SCHOOL COMMITTEE

Mr. Chairman and Members of the Subcommittee on Labor and HEW Appropriations:

My name is John McDonough, and I reside at 250 Gallivan Boulevard, Boston, Massachusetts. I am the Chairman of the Boston School Committee.

Mr. Chairman and Members of the Committee, I would like to be recorded in behalf of Senator Jackson's proposal to reimburse school districts for certain costs arising out of federally imposed desegregation orders.

The City of Boston is now in the second year of a court-ordered desegregation process. During these two years, the people of Boston have paid a tremendous price in terms of human suffering in compliance with two desegregation plans which, by all accounts, are considered to be failures. Your Committee can do little to alleviate our suffering in this respect.

Along with human suffering, the people of Boston have also paid a high price in terms of tax dollars in implementing the federal court desegregation order.

The judge sitting on the Boston case is perhaps the most activist jurist handling a desegregation matter in the nation today. He is, in fact, in complete control of the Boston School Department. His involvement in the day to day affairs of the School Department falls just short of counting the pieces of chalk in the system. His orders are all-pervasive and they carry a tremendous price tag for the people of Boston.

Until quite recently, Judge Garrity has given no consideration to the dollar cost of his Phase I and Phase II desegregation plans. His disdain for budgetary restraint is legendary in the Boston area.

Judge Garrity's abandon in more prosperous times would not present the problem it does today. We are all aware of the perilous financial condition of many of our large cities. Boston is no exception: municipal bonds--once so highly prized--are now suspect. Boston is having difficulty in raising money to pay its bills.

Much of this difficulty is due to unanticipated desegregation costs--police, building renovations, aides, extra teachers--all have swelled the City's budget.

Although it is difficult to get a clear picture of the total cost for the desegregation process in Boston (because of hidden costs), it is safe to estimate a 40 to 50 million dollar price tag for the two school years 1974-75 and 1975-76.

Most of the money raised by the City comes from property taxes. We presently have a tax rate per thousand assessment of just under two hundred dollars. Each million dollars spent represents 60 cents on the tax rate. Using that as a yardstick, it can be easily seen that the federal court order is costing Boston taxpayers some $15.00 on the tax rate each year.

Mr. Chairman and Members of the Committee, this is the basis of our plea for some federal relief from this awesome burden. Without it, the people of Boston and other cities will be doubly injured. Not only are they prevented from sending their children to a school of their choice, but they will have to bear the dollar cost of that imposition.

STATEMENT OF CONGRESSMAN JOE MOAKLEY

Mr. Chairman, as of March 1st, 600 workers in the city of Boston will be out of a job.

As of that date, the people of Boston will experience a cutback in vital city services. That means that there will be less money to pay people to fight fires; there will be less money to pay people to pick up garbage; and there will be less money to pay people to fight crime.

The people of Boston want to know why their city can no longer afford to pay people to perform vital services. The people of Boston want to know why they alone must carry the burden for a busing program ordered by a Federal judge.

The facts speak for themselves.

According to officials of the Boston School Committee, the 1974-75 budget for the Boston School Department was $126,294,636. The cost of phase I of Judge Garrity's busing program in terms of the school department budget was $10,363,375. The deficit for the Boston school department in that time was $12,847,636. In effect, when there is a deficit, the City of Boston has to pay more.

The projected figures for 1975-76 hit even harder. The projected budget for the Boston School Department is $147,230,789; the projected cost of phase II of Judge Garrity's busing program regarding the school department budget is $20,500,000; the projected deficit for the Boston School Department is between $16 and $20 million. Not only would the deficit be wiped out without busing, but there is a chance that the Boston School Department would have money left over. Which means that the City of Boston would have

more funds. That means possibly more police, more firefighters -- that means more jobs in a city that has a high unemployment rate.

Mayor White's figures are even more stunning. Besides the school department's costs, the Mayor's estimates come to approximately $8 million in overtime pay for police for phase II.

The more one looks at the amount of funds spent for court-ordered busing, the more one is outraged. Boston residents are saddled with spending millions of dollars and the city faces a large deficit because the Federal government insists that local cities pay for a national problem.

Mr. Chairman, it is time the Federal government did something concrete for the taxpayers of Boston and for the taxpayers of all the cities that are currently undergoing court-ordered busing. The costs of implementing these forced busing programs are enormous.

Officials of the Boston School Committee estimate that each Boston city taxpayer will have to pay $25 more this year. I think that is unjust. The Federal government must take responsibility and reimburse Boston taxpayers and others who face the same situation for expenses incurred to implement court-ordered busing. I urge the Committee to take action toward this end.

LETTER FROM SENATOR HENRY JACKSON

United States Senate

COMMITTEE ON
INTERIOR AND INSULAR AFFAIRS
WASHINGTON, D.C. 20510

February 20, 1976

Honorable Warren Magnuson
United States Senate
Washington, D.C.

Dear Warren:

As you know, the Emergency School Aid Act of 1972 was enacted to assist school districts which are attempting to implement partial or complete desegregation plans within the schools of the district. This program has been of inestimable value in providing limited but important financial assistance to cover the cost of programs to eliminate minority group isolation in the schools.

However, it is my judgment that the appropriations request of the Ford Administration for the school desegregation program is insufficient to meet an emergency situation which has developed in several major metropolitan areas as the result of Federal court decisions ordering massive district-wide school desegregation programs. For example, in Boston, Massachusetts the Federal District Court has ordered a desegregation plan resulting in expenditures of approximately $30 million during the 1975-76 school year. In Louisville, Kentucky and Detroit, Michigan court-ordered desegregation plans will cost those cities additional millions of dollars.

These high levels of spending ordered by the courts come at the worst possible time. To begin with, the tax base of many major urban areas has, over the past several years, been eroded as a result of continuing trends such as the suburban migration and a gradual deterioration of the inner city. School districts around the country are increasingly unable to pass school levies necessary for the day to day operation of the schools. Moreover, the current recession has reduced tax revenues and increased the cost of social programs, and it has eroded the tax base even further just at the moment of greatest need.

In view of these facts, I have proposed that a special emergency appropriation of $50 million be included in the Second Supplemental Appropriation bill now pending before the Labor-HEW Appropriations Subcommittee. This appropriation would be earmarked for expenditure in school districts, such as Boston or Louisville, which are undergoing a financial crisis due to court-ordered desegregation plans.

I want to thank you for your sympathetic consideration of this proposal in the discussions which you and I have already had on this subject. And I want to thank you for agreeing, in our conversations, to hold a subcommittee hearing on this proposal on February 25. As you may know, Senator Kennedy has indicated his support for my proposal, as have Mayor White, other city officials, and School Committee Chairman McDonough of the City of Boston. Several officials of the Cities of Boston and Louisville, Kentucky, among other cities, have expressed interest in testifying at that hearing. These local officials will be able to discuss the special problems of the communities they represent.

I, of course, would also like to have an opportunity to testify on this subject before the Committee.

My staff will continue to work with the Subcommittee staff to discuss the details of my proposal.

Your support and cooperation are deeply appreciated.

With best wishes,

Sincerely yours,

Henry M. Jackson

Henry M. Jackson, U.S.S.

SUBCOMMITTEE RECESS

Senator Magnuson. The subcommittee will stand in recess to reconvene at the call of the Chair.

Thank you all very much.

(Whereupon, at 3:30 p.m., Wednesday, February 25, the subcommittee was recessed, to reconvene at the call of the Chair.)

EMERGENCY SCHOOL AID

THURSDAY, FEBRUARY 26, 1976

U.S. SENATE,
SUBCOMMITTEE ON LABOR AND HEALTH, EDUCATION,
AND WELFARE, AND RELATED AGENCIES,
Washington, D.C.

The subcommittee met at 12 o'clock, in room 1114, Everett McKinley Dirksen Office Building, Hon. Thomas F. Eagleton presiding.

Present: Senator Eagleton.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

AMENDMENT TO EMERGENCY SCHOOL AID ACT

NONDEPARTMENTAL WITNESSES

STATEMENT OF RUDOLPH F. PIERCE, ESQ., FREEDOM HOUSE COALITION, BOSTON, MASS.

HEARING RESUMED

Senator EAGLETON. The hearing will come to order.

The subcommittee will now resume testimony on an amendment which Senator Jackson has proposed to the second supplemental appropriation bill. That amendment would add $50 million to the 1976 appropriation for emergency school aid. This money would be available to the Commissioner of Education to ease the special financial burdens of desegregation being felt in several localities across the country, such as Boston, Louisville, Detroit, and Ohio.

The hearing yesterday had to be suspended because of the heavy voting schedule and we wanted to give everybody an opportunity to speak. So we now have with us Mr. Rudolph Pierce who represents the Freedom House coalition.

STATEMENT OF MR. PIERCE

Mr. PIERCE. Thank you very much, Senator.

Had I known that the other witnesses from Louisville and Cleveland were not going to be here today, perhaps I would have just submitted my statement and gone home.

As you indicated at the beginning, I represent the Freedom House coalition. I am an attorney in Boston. The coalition is comprised principally of community groups and organizations in Boston's black and minority communities. Over the past 2 years, the members of the coalition have spent an enormous amount of time and energy and

money in an effort to assist minority students and their parents in understanding the process of desegregation and in adjusting to the problems which desegregation has caused for them from time to time.

So I am glad to be here on behalf of these parents, groups and organizations. On their behalf, I wish to make just a very brief statement.

First, I wish to state that the black and minority communities of Boston do support the Jackson amendment for an increase in the appropriations and I might add, any other credible program or legislation which is intended to increase the resources available to Boston to be used for educational purposes. I do want to underscore that the key to the support of the minority communities in Boston is the purpose for which the funds are to be used.

We support increased funding, if that funding is to be used solely and exclusively for educational purposes. I was told by those whom I represent here today to make it clear that skepticism in the minority communities abounds on the question as to whether those who have really opposed the interests of minority communities, at least insofar as the educational experience of minority children are concerned, can be expected or trusted to design and implement programs which effectively will improve the educational experience now of minority children.

Of course, we recognize that the funds, if appropriated, have to be received by a local educational agency. However, even though we are familiar in some respects with the legislation of these—and they do have somewhat elaborate prescriptive guidelines—it is our feeling that the guidelines in and of themselves are not sufficient. We would therefore urge this committee if it appropriates the money to require strict monitoring of the use of the funds, onsite monitoring wherever possible.

PARENTS SKEPTICAL

I do want to take a moment to state the basis of the skepticism in our community and why we feel that strict monitoring of the use of the funds is necessary. Parents of minority students are skeptical because they remember the purpose or the reason why they commenced litigation in Massachusetts to effect desegregation of the Boston public schools. The purpose then was not just to sit a black child next to a white child, but rather to improve the educational experience by black children.

Minority parents believed then what the court has told them is true now—that elected public officials were greatly responsible for the incredibly bad educational situation in which minority students found themselves in Boston. These minority parents are skeptical because in Boston, however one feels about the court's remedial order, its findings regarding the liability of Boston are clear, precise and well documented. Some commentators have even suggested that the findings of the court in Boston are the best documented findings of any such proceeding anywhere in the country.

What these findings show is that minority students in Boston have deliberately received the butt end; that is, the rear end of an educational system that was and still is inadequate for all of the students in the system, white or black. These findings also show that the elected public officials in Boston, particularly the school officials, virtually

resisted and opposed every educational suggestion designed to improve the educational experience of minority children.

In fact, funds were cut off by the Federal Government in Boston in 1978, and also by the State government, because local public school officials refused to initiate certain programs designed to help minority students.

Now, many of these same public officials are now asked or now have the responsibility of designing and implementing programs under ESAA and other educational programs presumably to enhance the educational experience of minority children. I only want to say that the parents of the minority children are skeptical as to the ability of these people to do that.

Yesterday, the mayor testified and he indicated what the expenditures are in the city. He indicated that there was a deficit. But what he failed to mention—and I think the record ought to be aware of it—is that school expenditures are high in Boston because of years of positive inaction. They are high because of the intransigence of the elected public officials over the years. They are high because of moneys which Boston lost because of irresponsible actions by public officials. And they are high because of the tremendous costs attached to the years of opposition to what was rght, that is, minority students were before and are now entitled to an equal distribution of the educational resources.

MINORITY COMMUNITIES SUPPORT JACKSON AMENDMENT

Therefore, minority communities, as I indicated at the beginning, support the Jackson amendment, but only if the funds are not used in any manner, direct or indirect, to continue the opposition of local public officials, from school officials, the mayor or the city council officials; so that these funds are not used to oppose the court order. We could hate to find at some later date that funds which this Congress appropriated for educational purposes were in fact used to continue the opposition to the court order or to pay the enormous legal fees for the city of Boston, the School Committee, or the Home and School Association.

I might add, all of these groups opposed the court order: the Home and School Association is not even a State agency. It required special State legislation in order to have the city of Boston pay their legal fees. So that we are acutely aware that substantial funds are being used to oppose the court order.

Senator EAGLETON. Are you saying these funds are coming out of the budget of the Boston School Committee?

Mr. PIERCE. Well, at least coming out of general tax revenue.

Senator EAGLETON. I see.

Mr. PIERCE. And finally, I say that we certainly would not like to learn that any of these funds were used in any way to support the educational needs of the new private academies which are springing up throughout the city of Boston. For should we discover in a year or two that these funds were used for these purposes, then, of course, the children of Boston, particularly the minority children, will have been cheated again.

Senator EAGLETON. Is there a risk of that? If enacted, would these funds go to the Boston School Committee? How conceivably would these moneys end up at the private academies?

Mr. PIERCE. Well, let me say, in Massachusetts we have a statute, chapter 71 of the General Laws, which permits school agencies, public school agencies to provide books, to loan books to students attending private schools.

Now first of all, I——

Senator EAGLETON. Excuse me, has this law been on the books for many years, or did this just crop up recently?

Mr. PIERCE. No, this statute was originally enacted in 1973 and has been amended in 1975 so as to make it clear that no private school agency can receive books if they discriminate.

Senator EAGLETON. I understand.

STRICT MONITORING STRESSED

Mr. PIERCE. The point is, I do want to stop by saying that I am not suggesting that there is misappropriation going on. I am only saying that we just want to make it clear to the Congress in the sense of a note of caution that we feel there must be strict monitoring of the money. Everybody in Boston, I would submit that anybody in any large city knowing the state of public school education, has to be in favor of increased resources to be spent for educational purposes. But in Boston the public discussion is still opposition to the court order. It is not really about education.

And yet these funds, presumably, as I read the legislation, are earmarked to be spent for educational purposes. And we want to make sure, to the extent that it is possible, that the funds are used precisely for that purpose. Presumably, then, the children will benefit and the politicians and the rest of us who are on one side or the other of the issue will go on doing what we are doing.

Senator EAGLETON. Well, I find your testimony very interesting. I have a few more questions, if you have time.

Mr. PIERCE. Fine.

Senator EAGLETON. What is the name of the organization, sir, that you represent?

Mr. PIERCE. Freedom House coalition.

Senator EAGLETON. Now, has the Freedom House coalition, as far as the Boston school situation is concerned, been the guiding light insofor as seeking relief from Judge Garrity—or did you work with the NAACP?

Mr. PIERCE. Well, we have worked with the NAACP. I should state, to the extent that it is important, that I, too, am one of the attorneys of record on behalf of the plaintiffs in the litigation up here in Federal court.

Senator EAGLETON. From the very beginning?

Mr. PIERCE. Not from the very beginning. I entered the proceedings at the remedial stage.

Senator EAGLETON. I see.

Mr. PIERCE. The Freedom House coalition is made up of about three principal agencies. There is also a thing called the coordinated social services of which now there are some 40 to 45 agencies from the Spanish community and other agencies.

Senator EAGLETON. By agencies, do you mean agencies of government or private agencies?

Mr. PIERCE. Private.

Senator EAGLETON. I see.

Mr. PIERCE. And they have been working with parents and students in connection with the desegregation over there, at least, as I said, for 2 years; and in some cases, people were involved in one aspect of education or another for years. I do think, just to get a perspective, it is important to recall that in Boston we have a State statute requiring racial imbalance. So that in a sense we have gone to a new phase of a fight that has been going on for some 10 years in Boston.

And so part of the skepticism of the minority community is remembering what the school committee did over that 10-year period.

I think it is fair to say that they did very little in the way of improving education for white students, let alone for minority students. And it is true that many of the people who were on the school committee then are elected public officials now, in fact. Some were here yesterday who are heartily opposed to improving the situation of the minority children. And yet these are the people who presumably will be responsible to it for seeing that these moneys are spent properly.

Senator EAGLETON. I would say what Missourians know about Boston in this context is that there is a massive busing plan between South Boston, which is predominantly an Irish Catholic area; and Roxbury.

Mr. PIERCE. Which is predominantly black.

Senator EAGLETON. And you have seen between Cronkite and Chancellor, different episodes on this. What is not known in Missouri—I do not know how to get it known—is the track record of the Boston School Committee. Am I accurate in this, that the record will show that for all intents and purposes there was a two-track system to the feeder schools? The elementary black feeder schools would feed into a black system, and an elementary white city school system would feed into a white system, or is that a gross oversimplification?

Mr. PIERCE. Well, I think it is partially correct. But it is an oversimplification.

I should, say, for example, that Judge Garrity's findings are well documented and that is because in Boston there is a phenomenon in the school committee that generally does not exist elsewhere: and that is that the school committee keeps running minutes and so all of their statements are recorded on the record and as it turned out, that provided the basis for much of Judge Garrity's findings. But a lot of other things happened.

FEEDER SCHOOL PROBLEM

One of the problems we had were feeder schools. We had a system in Massachusetts—we had junior high schools, some that were seventh and eighth grade; sixth, seventh, and eighth grade; and some that were seventh, eighth, and ninth. And it was the use or misuse of those kinds of schools that allowed white students—for example, a white student that lived in a neighborhood that was racially changing might be able to end up in a junior high school in a white community because of the nature of the junior high system that we had in Boston.

So there was abuse of the freedom. Also, there was misuse of a thing called open enrollment. We had a policy in Boston whereby a child

could transfer into any school where there was an empty seat. And we found that that enabled white students to escape from schools that were racially changing; but frequently that a black student had difficulty transferring to a school if there was an open seat. So that there were a number of these programs which the School Committee used as a way to trap minority students into a particular district and to enable white students to get out of a district.

Senator EAGLETON. Have you had occasion, either from a factual point of view or a legal point of view—or both, to follow or study what has been occurring in Detroit, Mich., or St. Louis, Mo.?

Mr. PIERCE. I know something about Detroit and nothing about St. Louis.

DETROIT CASE

Senator EAGLETON. Now, will you correct my knowledge of Detroit? I know a little about St. Louis. I know more about St. Louis than I do about Detroit. Of course, there was the so-called Detroit case, a very famous case. And I will give you my observation on the Detroit case.

I think it was the turning point insofar as busing is concerned. I think it spelled some outer limits on busing where they did not, by a close decision—it was 5 to 4—where they did not order busing across the Detroit city lines into the adjacent counties. And it is sort of a companion case with the Richmond case which was 4 to 4 because Powell did not sit—he was from Richmond, being an attorney for the school board.

And that in essence cut back on the Judge Mehrige order in Richmond. Give me the benefit of your reading of the Supreme Court Detroit case and what it does or does not portend for the future?

Mr. PIERCE. Well, I think there are two things in the Detroit case which are different. One is that at least, I think, they are factually different from Boston: In Detroit the first case, of course, we are talking about essentially a metropolitan effort. I think the court there was saying that before you could impose a metropolitan plan, you first had to establish that the suburban communities had committed some violation. I think the plaintiffs were concerned about that because they felt that there was some factual basis to substantiate that position.

So that is one situation in Detroit. That does not foreclose, as I say, a metropolitan plan. But it does make it increasingly difficult if you have to establish that all of the suburban communities surrounding a metropolitan area have committed a violation before you can impose a plan that would encompass them. Presumably you could impose a plan that may encompass one but not the other. And it seems to me that the machinations are infinite.

The other situation in Detroit, I think, is that you have a situation where there was a feeling, I think, that you needed a metropolitan plan because of the racial composition of the city. Now, what disturbs the NAACP about that is they have a view that it ought not to make a difference whether there is a majority, minority population or white. What you are really trying to do is effect racial balance to the extent it is available. And so it ought not make any difference if there are some whites. It does not mean that they then cannot end up in schools that are a majority black.

So there is this feeling on their part that the numbers or the composition it may have itself ought not to be determinative as to whether you could impose a plan in the city.

I am not quite sure—I do not know if you could say anything else about Detroit. But I would like to say why I think Boston is different.

First of all, Boston is not a city with a minority majority, I mean, the minority population in Boston does not constitute the majority in the city.

Senator EAGLETON. Are you talking about school population or census?

Mr. PIERCE. Well, school population, it is true now that minority pupils may constitute better than 50 percent. But it is not true that minority households constitute populationwise the majority of the city. And so far as I can see, even with all of the discussion about white flight and all of the rest of it, it does not seem that that is going to happen in Boston in the foreseeable future.

There are other factors which I think make Boston different from Detroit and different from Newark. So that I think that—I mean to the extend that a court could operate a plan in Boston, I think that is a viable possibility, notwithstanding the enrollment costs.

MINORITY HAS LITTLE INPUT

The other problem we have in Boston, which is particularly different from Detroit, is that the minority population has had little input into the system itself. I mean, we have yet to have a black member of the school committee in Boston.

Senator EAGLETON. Never.

Mr. PIERCE. Never. Well, I should not say never. Certainly never in the 20th century. It may have been true before the turn of the century.

Senator EAGLETON. Do those people who run for the School Committee run at large?

Mr. PIERCE. They run at large.

We have had, at least in the last—I do not want to say, certainly since we have had an at-large city council system, we have had only black member of the city council. We have not had one member there, at least it seems to me—in at least 60 years.

Senator EAGLETON. And better than 50 percent of the households in Boston, you think, are black?

Mr. PIERCE. No, no, better than 50 percent of the school age population is minority. But it is not 50 percent of the city. It is less than 50 percent.

Part of Judge Garrity's problem in his order is that he has been trying to get blacks in the system, that is to say, administrators and teachers. I would venture to say that before the court order we had less than 10 percent of the teachers in the system from minorities.

Senator EAGLETON. Less than 10 percent?

Mr. PIERCE. Less than 10 percent.

Senator EAGLETON. What was the highest ranking black in the school system? What duties did he have?

Mr. PIERCE. Mr. Leftwich was the assistant superintendent. And I am trying to think of whether there was a permanent headmaster. There are some acting headmasters. I am not sure whether there are any permanent ones. There are at least three, maybe four, headmasters who are at least acting in that position.

Senator EAGLETON. Is that of fairly recent origin? I mean, say back 10 years; was it like that?

Mr. PIERCE. I do not think it was true 10 years ago. I am sure that has occurred within the last 10 years. And so we have these problems. Effectively we have had an increasing minority enrollment, but a very small minority participation in the operation of the system. That has been our problem.

Senator EAGLETON. Have any of the television stations in Boston ever done an hour factual documentary that has spelled out some of these facts that you have described?

Mr. PIERCE. I do not know, Senator. I just do not know.

Senator EAGLETON. The Boston Globe, I take it, has.

Mr. PIERCE. Well, the Boston Globe has done a number of things. I mean, frankly, I think the Boston Globe has had editorials all over the lot.

Senator EAGLETON. Oh, it has? I thought they were basically with Judge Garrity. But maybe I am wrong.

Mr. PIERCE. Well, they have been and they have not been. It is kind of hard to find a consistent thread. I think part of the Boston Globe's problem, frankly, on this question, is it is clearly the most popularly read newspaper in the city and I think it is making a diligent effort to strike a balance.

In the sense there is such substantial opposition to the court order in Boston, I think the Boston Globe finds itself in a position where, you know, it is trying to pacify as many people as it can.

Senator EAGLETON. Let me ask you your legal opinion of this.

POTENTIAL FOR WHITE FLIGHT

Do you think, under *Brown* v. *Board of Education*, *Charlotte Mecklenburg* and what other Supreme Court cases—under those cases a Federal district court judge can take into account the formulation of whatever order he is going to issue—can take into account the potential for white flight?

Mr. PIERCE. I think the answer to that is no, Senator. I think that Judge Garrity has phrased it. He is supposed to take in the practicalities of the situation. But I think in fashioning an order, that he first has to come to grips with the constitutional violations that have been created. And his remedy has to be one which seeks to vindicate the violation of those rights.

The problem with white flight, I think, is that it is very difficult to find the basis on which people flee from the city, particularly when so much discussion goes on here and elsewhere about crime. It is hard, I think, to detemine whether people are fleeing the city because their children are now asked to go to a different location or whether there are other factors. So I think the concept of white flight is too elusive for a judge to really consider in fashioning a remedy. That really takes in what, I think, the opponents to a busing order, may say would effect white flight.

Senator EAGLETON. Have you had occasion to read the opinion just recently rendered by the Federal trial judge in Detroit?

Mr. PIERCE. No.

Senator EAGLETON. I would very much appreciate it if we could get a copy of that opinion. I would like to mail it to you and I would very much like to have your observations on that. I am inclined to think

what you have said is the case. I am not certain, but I am inclined to think you are right; that is, a judge, a district court judge, he is there to vindicate constitutional rights under the equal protection clause. He must find, based on the facts—that is, he has his principal function to find: Was there deprivation of certain constitutional rights? If he finds that there was, whether it is Boston, he must then fashion a remedy to vindicate those rights or to give relief.

And I kind of think you are right that in fashioning that order, there is no real basis where he can take into account the potential of white flight. You say it is hard to measure. What is the real reason that people go? Is it taxes? Is it blacks? Is it that the schools are old and crumbling? Is it that the plants are now moving out to suburbia and he is moving out because his job is moving out?

You know, it is a very, very difficult thing. But if I am told of the Detroit case properly, I have not read the trial judge's opinion myself, but some people have mentioned it to me on a hearsay basis. That judge apparently did take into account the potential of white flight in fashioning his order.

ST. LOUIS SITUATION DESCRIBED

Now let me discuss with you St. Louis a little bit. I know you have no reason to know too much about the St. Louis situation, but let me describe it for you, and just take my word that my description of it is fairly accurate. My father used to be on the school board in St. Louis and I used to go to all the meetings with him—starting when I was about 9 years of age till I was 15. He served 6 years. It was during his tenure on the board that the St. Louis schools were integrated.

And he was the leading proponent of integrated schools. In those days there were two black high schools in St. Louis, eight white high schools. I do not remember the mix of elementary schools. But they were black and they were white. St. Louis is an old town that has both eastern affiliations and southern. I just give that for this history.

St. Louis City is a city now of about 600,000 people. The St. Louis schools system is exactly coterminus with the city. The city is not in the county. St. Louis County now is 1.1 million people. It is the rich area. It is the Montgomery County area. And there are about 20 school systems out there. But St. Louis City—there is one solid St. Louis City system. By the way, 100 years ago, the record will show that St. Louis City had a chance to annex all that land out there and they said: "No, we don't want that farmland from you out there. We will just keep the city the way it is. The hell with the crummy farmland."

OK, now in the St. Louis public school system—by the way, there are 5 members out of 12 who are black—here is the mix, the racial mix in the St. Louis City school system. It is 73.5 percent black, and 26.5 percent white. Basically, to oversimply it, north St. Louis is black, south St. Louis is white. I am oversimplifying it a little bit.

A suit was filed in St. Louis about 3 years ago. At that time the racial mix was fairly—maybe it was 68 percent. It has now gone up to 73. The case just sort of sat there for quite a while. The NAACP knew of the case, sent a couple of guys out from time to time to do some work on it, but they never entered the case as principal counsel. They were sort of casual consultants.

Just before Christmas, a consent order was proposed. The black parents of the black children were the plaintiffs as a class. They agreed to a consent order with the St. Louis school board and the consent order called for the following things: There would have to be, by formula, a change of faculty. It was broken down. The white schools had white teachers. The black schools had black teachers. So they had a formula to start changing that.

Magnet schools—it did not say how many—but that there would be magnet schools, and then the judge found, and he entered it in part of his findings in this consent order, that there was segregation in St. Louis, as a matter of fact, but not as a matter of law. There is a dispute now, as I read the order, as to what does he say. But he did say I do find in the St. Louis school system, segregation as a matter of fact, period.

At the very last moment he said that that consent decree would be open to comment and challenge for 30 days. On the 29th day the NAACP, the national group, came in and asked to be heard. They said they objected to the consent order. Did they have the right to intervene, blah, blah, blah. The court ruled against them and now it is going to go up on appeal to the eighth Circuit Court of Appeals.

EFFECT OF EXTENSIVE BUSING

I am sorry to take so long spelling this out, but I wanted to give you the flavor. Now I get to my question. As I say, the St. Louis school system is 73 percent black. Assume that under the Detroit opinion there was no collusion between the county school systems and the city school systems. Assume that there is this black North St. Louis and the white South St. Louis. What do you think, based on your experience with these matters, what do you think would be the effect of an extensive busing order to try to make every school roughly 70 to 75 percent black and 30 to 25 percent white?

Mr. PIERCE. What do I think the effect would be?

Senator EAGLETON. Yes, in terms of white flight?

Mr. PIERCE. Well, I suspect, Senator, I mean, I do not say that there are not people who would leave the city because they are required to move. I mean, I am certainly not going to go on record here and say that. But I suspect there would be some people who would be angry and they would try to move. It just seems to me that that is fairly inevitable.

But I think the question raises something that is slightly broader. It seems to me that every time there is an order or a piece of legislation, which turns out to require some major social policy or result, that there are people on both sides and there are people who make adjustments in their lives. And I am sure that in St. Louis, if they were required to have a transportation situation, that there would be white parents who would leave.

I would add that part of our problem in this area is, of course, we cannot seem to get a basis or a handle on litigation to establish the right to a quality education. One of the things, the point that we try to make is that the purpose for which minority parents bring these suits is not just to have white children and black children sitting next to each other. But it seems the only way you can get an equal distribution of the meager resources is to have that situation in place.

Senator EAGLETON. You are absolutely right.

Mr. PIERCE. And then, of course, there just seems to be no choice. So you know it is always unpopular to those people who have to be moved and I do not think that there is any way that that can be avoided.

Senator EAGLETON. The real clout in a civil rights suit of this type—I couldn't agree with you more—is, you know, *Plessy* v. *Ferguson*, separate but equal, that went down the tube in *Brown* v. *Board of Education*. But you and I both know that there are many school systems in which the resources and materials, books, the quality of the materials, the facilities, are still inferior in many black areas of urban America and is still superior in many white areas of urban America. That is a fact. It is a fact.

And so, when black parents, black activist leaders feel that one of the things they can get out of a suit is that—my God, we at least start to rectify that. You know, there should be no debate over that. It is not even debatable. But it is so sad that the factual truth is that those disparities exist.

Mr. PIERCE. If I could just add one other thing, Senator? I think the unique thing about the order of the court in Massachusetts is that at the time of the remedial phase—there were a great many people who came together and said we cannot have a plan imposed here that is a traditional plan that ultimately just moves people from one location to another.

PLAN MUST INCORPORATE EDUCATIONAL FACTOR

We have to have a plan that takes into account the factor of education. And I think, to the credit of the court there, Judge Garrity went a long way to try to include things that have been suggested to him to get at some of these educational factors: the business of including universities and others because, I mean, what these suits are really about is they are about education, really. That is the critical factor.

And what we have in Boston, is that we had a bad educational system for everybody that was made worse for minority children by deliberate action. The suit itself was to effect an equal distribution of the resources, but still, beyond that a lot needed to be done to bring the entire system up. And I think the court in Massachusetts, through its order, has at least made the first attempt to get at the educational factors that are inherent in this process.

Senator EAGLETON. I have a question that Senator Brooke wanted me to ask of you, if I may.

Would you favor increasing emergency school aid funding by increasing the amount of discretionary funds available to the U.S. Commission of Education? Senator Brooke has made this kind of proposal.

Shall I repeat it? Would you favor——

Mr. PIERCE. I understand the question.

I think, Senator—I mean, it seems to me that the alternative to that is to have the funds repose exclusively in the hands of the school committee. I think that I would prefer to have—to probably have the funds in a Commissioner of Education. But as I say, the key factor

for us, in our view, is not just prescriptive guidelines, but that the Commissioner have a sense of the necessity of strict monitoring. That is really what we are after when I talk about the use of the funds. And we want to make sure that they are used properly. So I would hope that the Commissioner, even if he has the discretion, would see to it; that he could fashion something that would require some monitoring system that would really get at how the moneys are spent, how those monies are used. That really is what is our fear in Boston. What the major did not tell us yesterday, is that all the problems of the budget, the deficit—how much of the deficit results directly to the costs spent opposing all of this business.

USE OF FUNDS

And what we are concerned about is that all of this money may not be used for educational purposes. And we really are for anything to impact on education. But we are certainly not for anything that leads to increase opposition or at least pays for opposition.

Senator EAGLETON. Well, the law that we are operating under here tends to prohibit the use of funds for anything other than educational purposes. This supplemental business that we are talking about is in an educational supplemental. It is not a legal service supplemental. It is not a pay the lawyer supplemental.

It is not the Boston School Committee sinking fund supplemental. This is an education bill and these moneys are supposed to be used for education.

I, Harley, will want to send a letter. I hope that Chairman Magnuson will author the letter, and Mr. Brooke, who is the ranking Republican, and I would like to sign it too, directing the Commissioner of Education, refreshing his memory, that this is an educational bill; that this $50 million is education money, and nothing else but education.

And I would like to have appended to that letter either the full statement of Mr. Pierce or such excerpts that relate to it.

The late and unlamented President Nixon used to say we will make it crystal clear as to what the intent of this committee, the intent of Congress is.

Mr. PIERCE. Thank you very much, Senator.

Senator EAGLETON. Yes. And I think it ought to be very forcefully, directly stated in the report of this bill and the report be attached and underlined to the Commissioner, OK?

Mr. PIERCE. Thank you very much, Senator.

Senator EAGLETON. Mr. Pierce, I appreciate your appearance here. I think you have made some very telling points. How long have you been practicing law?

Mr. PIERCE. Six years, sir.

SUBCOMMITTEE RECESS

Senator EAGLETON. The subcommittee will stand in recess.

[Whereupon, at 12:29 p.m., Thursday, February 26, subcommittee was recessed, to reconvene at the call of the Chair.]

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